

# VIVINT SOLAR, INC.

## FORM 10-Q (Quarterly Report)

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Address	4931 NORTH 300 WEST PROVO, UT 84604
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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT 1934**

For the quarterly period ended September 30, 2014

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 001-36642

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**VIVINT SOLAR, INC.**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of  
incorporation or organization)

45-5605880  
(I.R.S. Employer  
Identification Number)

3301 N. Thanksgiving Way, Suite 500  
Lehi, Utah 84043  
(Address of principal executive offices) (Zip Code)

(877) 404-4129  
(Registrant's telephone number, including area code)

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of November 3, 2014, 105,303,122 shares of the registrant's common stock were outstanding.

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Vivint Solar, Inc.  
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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

**Vivint Solar, Inc.**  
**Condensed Consolidated Balance Sheets**  
(In thousands, except share and per share data and footnote 1)

	September 30, 2014 (Unaudited)	December 31, 2013
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 66,149	\$ 6,038
Accounts receivable, net	2,712	608
Inventories, net	559	—
Prepaid expenses and other current assets	16,720	5,938
Total current assets	86,140	12,584
Restricted cash, non-current	6,516	5,000
Solar energy systems, net	467,460	188,058
Property, net	11,034	3,640
Intangible assets, net	22,157	27,364
Goodwill	36,431	29,545
Prepaid tax asset, net	76,555	30,738
Other non-current assets, net	17,912	778
<b>TOTAL ASSETS <sup>(1)</sup></b>	<b>\$ 724,205</b>	<b>\$ 297,707</b>
<b>LIABILITIES, REDEEMABLE NON-CONTROLLING INTERESTS AND TOTAL EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 54,761	\$ 25,356
Accounts payable—related party	7	3,068
Distributions payable to non-controlling interests and redeemable non-controlling interests	3,879	1,576
Accrued compensation	15,680	15,491
Current portion of deferred revenue	180	68
Current portion of capital lease obligation	2,915	1,275
Accrued and other current liabilities	21,010	10,307
Total current liabilities	98,432	57,141
Capital lease obligation, net of current portion	5,457	2,486
Revolving lines of credit—related party	58,692	41,412
Long-term debt	87,000	—
Deferred tax liability, net	88,427	41,510
Deferred revenue, net of current portion	2,554	1,272
Total liabilities <sup>(1)</sup>	340,562	143,821
Commitments and contingencies (Note 15)		
Redeemable non-controlling interests	122,955	73,265
Stockholders' equity:		
Common stock, \$0.01 par value—1,000,000,000 authorized, 84,703,122 shares issued and outstanding as of September 30, 2014; 100,000,000 authorized, 75,000,000 shares issued and outstanding as of December 31, 2013	847	750
Additional paid-in capital	199,479	75,049
(Accumulated deficit) retained earnings	(19,710)	3,034
Total stockholders' equity	180,616	78,833
Non-controlling interests	80,072	1,788
Total equity	260,688	80,621
<b>TOTAL LIABILITIES, REDEEMABLE NON-CONTROLLING INTERESTS AND TOTAL EQUITY</b>	<b>\$ 724,205</b>	<b>\$ 297,707</b>

(1) The Company's consolidated assets as of September 30, 2014 and December 31, 2013 include \$418.7 million and \$156.2 million consisting of assets of variable interest entities, or VIEs, that can only be used to settle obligations of the VIEs. These assets include solar energy systems, net, of \$408.0 million and \$152.6 million as of September 30, 2014 and December 31, 2013; cash and cash equivalents of \$9.0 million and \$3.1 million as of September 30, 2014 and December 31, 2013; and accounts receivable, net, of \$1.7 million and \$0.5 million as of September 30, 2014 and December 31, 2013. The Company's condensed consolidated liabilities as of September 30, 2014 and December 31, 2013 included \$6.5 million and \$2.9 million of liabilities of VIEs whose creditors have no recourse to the Company. These liabilities include distributions payable to non-controlling interests and redeemable non-controlling interests of \$3.9 million and \$1.6 million as of September 30, 2014 and December 31, 2013; and deferred revenue of \$2.6 million and \$1.3 million as of September 30, 2014 and December 31, 2013. See further description in Note 10—Investment Funds.

See accompanying notes to condensed consolidated financial statements.

**Vivint Solar, Inc.**  
**Condensed Consolidated Statements of Operations**  
(In thousands, except share and per share data)  
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
<b>Revenue:</b>				
Operating leases and incentives	\$ 7,131	\$ 2,123	\$ 15,798	\$ 3,916
Solar energy system and product sales	1,202	151	2,600	283
Total revenue	<u>8,333</u>	<u>2,274</u>	<u>18,398</u>	<u>4,199</u>
<b>Operating expenses:</b>				
Cost of revenue—operating leases and incentives	19,515	4,811	47,161	12,824
Cost of revenue—solar energy system and product sales	627	32	1,510	108
Sales and marketing	5,220	2,105	16,229	4,995
Research and development	431	—	1,403	—
General and administrative	37,170	5,135	63,276	9,967
Amortization of intangible assets	3,727	3,649	11,155	10,946
Total operating expenses	<u>66,690</u>	<u>15,732</u>	<u>140,734</u>	<u>38,840</u>
Loss from operations	(58,357)	(13,458)	(122,336)	(34,641)
Interest expense	3,261	963	7,335	1,954
Other expense	297	541	1,462	1,063
Loss before income taxes	(61,915)	(14,962)	(131,133)	(37,658)
Income tax (benefit) expense	(10,222)	31	(3,286)	76
Net loss	(51,693)	(14,993)	(127,847)	(37,734)
Net loss attributable to non-controlling interests and redeemable non-controlling interests	(16,415)	(37,848)	(105,103)	(40,155)
Net (loss attributable) income available to common stockholders	<u>\$ (35,278)</u>	<u>\$ 22,855</u>	<u>\$ (22,744)</u>	<u>\$ 2,421</u>
<b>Net (loss attributable) income available per share to common stockholders:</b>				
Basic	<u>\$ (0.45)</u>	<u>\$ 0.30</u>	<u>\$ (0.30)</u>	<u>\$ 0.03</u>
Diluted	<u>\$ (0.45)</u>	<u>\$ 0.30</u>	<u>\$ (0.30)</u>	<u>\$ 0.03</u>
<b>Weighted-average shares used in computing net (loss attributable) income available per share to common stockholders:</b>				
Basic	<u>78,428,498</u>	<u>75,000,000</u>	<u>76,159,639</u>	<u>75,000,000</u>
Diluted	<u>78,428,498</u>	<u>75,000,912</u>	<u>76,159,639</u>	<u>75,013,624</u>

See accompanying notes to condensed consolidated financial statements.

**Vivint Solar, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
(In thousands)  
(Unaudited)

	Nine Months Ended September 30,	
	2014	2013
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$ (127,847)	\$ (37,734)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	5,435	1,012
Amortization of intangible assets	11,270	10,946
Stock-based compensation	20,846	336
Amortization of deferred financing costs	1,522	—
Noncash contributions for services	181	122
Noncash interest expense	4,280	1,757
Deferred income taxes	45,567	17,476
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable, net	(1,893)	(609)
Inventories, net	21	—
Prepaid expenses and other current assets	(11,610)	(2,209)
Prepaid tax asset, net	(45,817)	(18,080)
Other non-current assets, net	(11,350)	(334)
Accounts payable	1,243	4,731
Accounts payable—related party	(3,061)	1,628
Accrued compensation	(2,786)	6,469
Deferred revenue	1,340	400
Accrued and other current liabilities	7,788	3,541
Net cash used in operating activities	(104,871)	(10,548)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Payments for the cost of solar energy systems	(249,612)	(96,694)
Payment in connection with business acquisition, net of cash acquired	(12,040)	—
Payments for property	(3,056)	—
Change in restricted cash	(1,516)	(3,500)
Purchase of intangible assets	(269)	—
Proceeds from U.S. Treasury grants	190	8,976
Net cash used in investing activities	(266,303)	(91,218)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from investment by non-controlling interests in subsidiaries	240,863	84,379
Proceeds from issuance of common stock	103,500	—
Distributions paid to non-controlling interests and redeemable non-controlling interests	(5,484)	(1,525)
Proceeds from long-term debt	87,000	—
Proceeds from short-term debt	75,500	—
Payments on short-term debt	(75,500)	—
Payments on revolving lines of credit	—	(2,000)
Proceeds from revolving lines of credit—related party	154,500	63,483
Payments on revolving lines of credit—related party	(141,500)	(40,000)
Principal payments on capital lease obligations	(1,810)	(674)
Payments for deferred offering costs	(5,784)	—
Capital contribution from Parent	—	1,418
Net cash provided by financing activities	431,285	105,081
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>60,111</b>	<b>3,315</b>
CASH AND CASH EQUIVALENTS—Beginning of period	6,038	11,650
CASH AND CASH EQUIVALENTS—End of period	<u>\$ 66,149</u>	<u>\$ 14,965</u>
<b>NONCASH INVESTING AND FINANCING ACTIVITIES:</b>		
Vehicles acquired under capital leases	\$ 6,421	\$ 4,076
Accrued distributions to non-controlling interests and redeemable non-controlling interests	\$ 2,302	\$ 915
Costs of solar energy systems included in accounts payable, accrued compensation and other accrued liabilities	\$ 33,596	\$ 11,845
Receivable for tax credit recorded as a reduction to solar energy system costs	\$ 3,380	\$ —

See accompanying notes to condensed consolidated financial statements.

**Vivint Solar, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(Unaudited)**

**1. Organization**

Vivint Solar, Inc. (formerly known as V Solar Holdings, Inc.) was incorporated as a Delaware corporation on August 12, 2011, and changed its name to Vivint Solar, Inc. from V Solar Holdings, Inc., on April 29, 2014. Vivint Solar, Inc. and its subsidiaries are collectively referred to as the “Company.” The Company commenced operations in May 2011. The Company offers solar energy to residential customers through long-term customer contracts, such as power purchase agreements and solar energy system leases. The Company enters into these long-term customer contracts through a sales organization that uses a direct-to-home sales model. The long-term customer contracts are typically for 20 years and require the customer to make monthly payments to the Company. Through the acquisition of Solmetric Corporation (“Solmetric”) in the first quarter of 2014, the Company also offers photovoltaic installation software products and devices.

The Company has formed various investment funds to monetize the recurring customer payments under its long-term customer contracts and the investment tax credits, accelerated tax depreciation and other incentives associated with residential solar energy systems. The Company uses the cash received from the investment funds to finance a portion of the Company’s variable and fixed costs associated with installing the residential solar energy systems.

On November 16, 2012 (the “Acquisition Date”), investment funds affiliated with The Blackstone Group L.P. (the “Sponsor”) and certain co-investors (collectively, the “Investors”), through 313 Acquisition LLC (“313”), acquired 100% of the equity interests of APX Group, Inc. (“Vivint”) and the Company (the “Acquisition”). The Acquisition was accomplished through certain mergers and related reorganization transactions pursuant to which the Company became a direct wholly owned subsidiary of 313, an entity owned by the Investors.

Since inception and continuing after the Acquisition, the Company has relied upon Vivint and certain of its affiliates for many of its administrative, managerial, account management and operational services. The Company was consolidated by Vivint as a variable interest entity prior to the Acquisition, and continues to be an affiliated entity and related party subsequent to the Acquisition. The Company has entered into various agreements and transactions with Vivint and its affiliates related to these services. See Note 14—Related Party Transactions.

**2. Summary of Significant Accounting Policies**

***Basis of Presentation and Principles of Consolidation***

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (the “SEC”) regarding interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, these unaudited condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and accompanying notes included in the Company’s prospectus filed with the SEC pursuant to Rule 424(b) under the Securities Act of 1933, as amended, on October 1, 2014 (the “Prospectus”). The results of the nine months ended September 30, 2014 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2014 or for any other interim period or other future year.

The condensed consolidated financial statements reflect the accounts and operations of the Company and those of its subsidiaries in which the Company has a controlling financial interest. The Company uses a qualitative approach in assessing the consolidation requirement for variable interest entities (“VIEs”). This approach focuses on determining whether the Company has the power to direct the activities of the VIE that most significantly affect the VIE’s economic performance and whether the Company has the obligation to absorb losses, or the right to receive benefits, that could potentially be significant to the VIE. For all periods presented, the Company has determined that it is the primary beneficiary in all of its operational VIEs. The Company evaluates its relationships with the VIEs on an ongoing basis to ensure that it continues to be the primary beneficiary. All intercompany transactions and balances have been eliminated in consolidation. For additional information, see Note 10—Investment Funds.

The condensed consolidated financial statements reflect all of the costs of doing business, including the allocation of expenses incurred by Vivint on behalf of the Company. For additional information, see Note 14—Related Party Transactions. These expenses were allocated to the Company on a basis that was considered to reasonably reflect the utilization of the services provided to, or the benefit obtained by, the Company. The allocations may not, however, reflect the expense the Company would have incurred as an independent company for the periods presented, and may not be indicative of the Company’s future results of operations and financial position.

### Use of Estimates

The preparation of the condensed consolidated financial statements requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. The Company regularly makes significant estimates and assumptions including, but not limited to, estimates that affect the Company's principles of consolidation, revenue recognition, the useful lives of solar energy systems, the valuation and recoverability of intangible assets and goodwill acquired, useful lives of intangible assets, recoverability of long-lived assets, the recognition and measurement of loss contingencies, the valuation of stock-based compensation, the determination of valuation allowances associated with deferred tax assets, and the valuation of non-controlling interests and redeemable non-controlling interests. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results could differ materially from those estimates.

### Comprehensive Loss

As the Company has no other comprehensive income or loss, comprehensive loss is the same as net loss for all periods presented.

During the three months ended September 30, 2014, there have been no changes to the Company's significant accounting policies as described in the Prospectus.

### 3. Fair Value Measurements

The Company measures and reports its cash equivalents at fair value. The following tables set forth the fair value of the Company's financial assets measured on a recurring basis by level within the fair value hierarchy (in thousands):

	September 30, 2014			Total
	Level I	Level II	Level III	
<b>Financial Assets</b>				
Time deposits	\$ —	\$ 1,900	\$ —	\$ 1,900
Money market funds	607	—	—	607
Total financial assets	<u>\$ 607</u>	<u>\$ 1,900</u>	<u>\$ —</u>	<u>\$ 2,507</u>

  

	December 31, 2013			Total
	Level I	Level II	Level III	
<b>Financial Assets</b>				
Time deposits	\$ —	\$ 1,900	\$ —	\$ 1,900
Money market funds	620	—	—	620
Total financial assets	<u>\$ 620</u>	<u>\$ 1,900</u>	<u>\$ —</u>	<u>\$ 2,520</u>

The carrying amounts of certain financial instruments of the Company, consisting of cash and cash equivalents excluding time deposits; accounts receivable; accounts payable; accounts payable—related party and distributions payable to redeemable non-controlling interests (all Level I) approximate fair value due to their relatively short maturities. Time deposits (Level II) approximate fair value due to their short-term nature (30 days) and, upon renewal, the interest rate is adjusted based on current market rates. The Company's long-term debt, consisting of an aggregation credit facility (as described in Note 9), is carried at cost and was \$87.0 million as of September 30, 2014. As the Company's aggregation credit facility was entered into on September 12, 2014 and interest is based on market rates, the carrying value approximates fair value. The Company's revolving lines of credit—related party are comprised of two lines of credit and are carried at cost of \$58.7 million and \$41.4 million as of September 30, 2014 and December 31, 2013. The Company has estimated the fair value of its related party revolving lines of credit to be \$55.8 million and \$39.0 million as of September 30, 2014 and December 31, 2013 based on rates for companies with similar credit ratings and issuances at approximately the same time period and in the same market environment. The Company did not have realized gains or losses related to financial assets for any of the periods presented.

#### 4. Solmetric Acquisition

In January 2014, the Company completed the acquisition of Solmetric (the "Solmetric Acquisition"), a developer and manufacturer of photovoltaic installation software products and devices. The purchase price agreed to in the purchase agreement with Solmetric was \$12.0 million plus a net working capital adjustment resulting in total cash purchase consideration of \$12.2 million. In connection with the Solmetric Acquisition, the total consideration of \$12.2 million was used for the purchase of all outstanding stock and options of Solmetric, settlement of Solmetric's short-term promissory note, and settlement of other liabilities including employee-related liabilities of Solmetric incurred in connection with the acquisition. The Company incurred \$0.3 million of costs related to retention bonuses to key Solmetric employees and \$59,000 of transaction fees, all of which have been included in the various line items of the condensed consolidated statements of operations for the nine months ended September 30, 2014.

Pursuant to the terms of the purchase agreement, \$1.0 million of the purchase consideration was placed in escrow and is being held for general representations and warranties, rather than specific contingencies or specific assets or liabilities of the Company. The Company has no right to these funds, nor does it have a direct obligation associated with them. Accordingly, the Company does not include the escrow funds in its condensed consolidated balance sheets. Notwithstanding any prior claims to the escrow fund due to a breach of representations and warranties, the escrow is expected to be released upon the one year anniversary of the Solmetric Acquisition.

The estimated fair values of the assets acquired and liabilities assumed are based on information obtained from various sources including third party valuations, management's internal valuation and historical experience. The fair values of the intangible assets related to customer relationships, trade names and trademarks, developed technology and in-process research and development were determined using the income approach and significant estimates relate to assumptions as to the future economic benefits to be received, cash flow projections and discount rates.

The purchase price has been preliminarily allocated based on the estimated fair value of net assets acquired and liabilities assumed at the date of the acquisition. The preliminary purchase price allocation is subject to further refinement and may require significant adjustments to arrive at the final purchase price allocation. These adjustments will primarily relate to working capital adjustments and income tax-related items. The purchase price allocation is expected to be completed within 12 months of the acquisition date.

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed (in thousands):

Cash acquired	\$	139
Inventories		580
Other current assets acquired		221
Property		77
Customer relationships		738
Trademarks/trade names		1,664
Developed technology		1,295
In-process research and development		2,097
Goodwill		6,886
Deferred tax liability, net		(1,308)
Current liabilities assumed		(210)
Total	\$	<u>12,179</u>

Goodwill, which represents the purchase price in excess of the fair value of net assets acquired, is not expected to be deductible for income tax purposes. This goodwill is reflective of the value derived from the Company utilizing Solmetric's advanced technology to improve the installation and efficacy of its solar panels as well as the expected growth in the Solmetric business, based on its historical performance and the expectation of continued growth as the solar industry expands.

For tax purposes, the acquired intangible assets are not amortized. Accordingly, a deferred tax liability of \$2.5 million was recorded for the difference between the book and tax basis related to the intangible assets. Additionally, a deferred tax asset of \$1.2 million was recorded mainly as a result of Solmetric's net operating losses.

Financial results for Solmetric since the acquisition date are included in the results of operations for the nine months ended September 30, 2014. Solmetric contributed \$1.1 million of revenues and \$0.4 million of net income for the three months ended September 30, 2014. Solmetric contributed \$2.4 million of revenues and \$0.2 million of net income from the date of the acquisition through September 30, 2014.

### Pro Forma Information

The following pro forma financial information is based on the historical financial statements of the Company and presents the Company's results as if the Solmetric Acquisition had occurred as of January 1, 2013 (in thousands):

	Nine Months Ended September 30,	
	2014	2013
Pro forma revenue	\$ 18,521	\$ 6,254
Pro forma net loss	(121,634)	(37,606)
Pro forma net (loss attributable) income available to common stockholders	(15,891)	2,549

The pro forma results include the accounting effects resulting from the Solmetric Acquisition, such as the amortization charges from acquired intangible assets, reversal of costs related to special retention bonuses and other payments to employees and transaction costs directly related to the Solmetric Acquisition, elimination of intercompany sales and reversal of the related tax effects. The pro forma information presented does not purport to present what the actual results would have been had the Solmetric Acquisition actually occurred on January 1, 2013, nor is the information intended to project results for any future period.

### 5. Solar Energy Systems

Solar energy systems, net consisted of the following (in thousands):

	September 30, 2014	December 31, 2013
System equipment costs	\$ 383,463	\$ 155,101
Initial direct costs related to solar energy systems	58,131	22,250
Solar energy system inventory	33,021	12,782
	474,615	190,133
Less: Accumulated depreciation and amortization	(7,155)	(2,075)
Solar energy systems, net	<u>\$ 467,460</u>	<u>\$ 188,058</u>

The Company recorded depreciation and amortization expense related to solar energy systems of \$2.0 million and \$0.5 million for the three months ended September 30, 2014 and 2013. Depreciation and amortization expense related to solar energy systems of \$5.1 million and \$1.0 million was recorded for the nine months ended September 30, 2014 and 2013.

### 6. Intangible Assets

Intangible assets consisted of the following (in thousands):

	September 30, 2014	December 31, 2013
<b>Cost:</b>		
Customer contracts	\$ 43,783	\$ 43,783
Customer relationships	738	—
Trademarks/trade names	1,664	—
Developed technology	1,295	—
In-process research and development	2,097	—
Internal-use software	269	—
Total carrying value	49,846	43,783
<b>Accumulated amortization:</b>		
Customer contracts	(27,364)	(16,419)
Customer relationships	(98)	—
Trademarks/trade names	(111)	—
Developed technology	(116)	—
Total accumulated amortization	(27,689)	(16,419)
Total intangible assets, net	<u>\$ 22,157</u>	<u>\$ 27,364</u>

During the three months ended September 30, 2014, the Company incurred third-party costs related to the development of an internal-use software application to improve the sales process. The costs have been capitalized and are subject to amortization over the

expected useful life of three years. The Company recorded amortization expense of \$3.7 million and \$3.6 million for the three months ended September 30, 2014 and 2013, which was included in amortization of intangible assets in the condensed consolidated statements of operations. The Company recorded amortization expense of \$11.3 million for the nine months ended September 30, 2014, of which \$0.1 million was recorded in cost of revenue-solar energy system and product sales. Amortization expense was \$10.9 million for the nine months ended September 30, 2013.

## 7. Accrued Compensation

Accrued compensation consisted of the following (in thousands):

	September 30, 2014	December 31, 2013
Accrued payroll	\$ 8,704	\$ 3,142
Accrued commissions	6,871	4,206
Accrued employee taxes	105	8,143
Total accrued compensation	<u>\$ 15,680</u>	<u>\$ 15,491</u>

## 8. Accrued and Other Current Liabilities

Accrued and other current liabilities consisted of the following (in thousands):

	September 30, 2014	December 31, 2013
Sales and use tax payable	\$ 8,179	\$ 5,299
Accrued professional fees	7,408	—
Accrued penalties and interest	2,037	1,909
Income tax payable	1,210	3,061
Deferred rent	953	—
Other accrued expenses	1,223	38
Total accrued and other current liabilities	<u>\$ 21,010</u>	<u>\$ 10,307</u>

## 9. Debt Obligations

Debt consisted of the following (in thousands):

	September 30, 2014	December 31, 2013
Revolving lines of credit—related party	\$ 58,692	\$ 41,412
Long-term debt	87,000	—
Total debt	<u>145,692</u>	<u>41,412</u>

### *Bank of America, N.A. Aggregation Credit Facility*

In September 2014, the Company entered into an aggregation credit facility (the “Aggregation Facility”) pursuant to which the Company may borrow up to an aggregate of \$350.0 million and, subject to certain conditions, up to an additional aggregate of \$200.0 million in borrowings with certain financial institutions for which Bank of America, N.A. is acting as administrative agent. For accounting purposes, the Aggregation Facility is considered a modification of a term loan credit facility entered into in May 2014.

Prepayments are permitted under the Aggregation Facility, and the principal and accrued interest on any outstanding loans mature on March 12, 2018. Under the Aggregation Facility, interest on borrowings accrues at a floating rate equal to (1) a margin that varies between 3.25% during the period during which the Company may incur borrowings and 3.50% after such period and either (2)(a) the London Interbank Offer Rate (“LIBOR”) or (b) the greatest of (i) the Federal Funds Rate plus 0.5%, (ii) the administrative agent’s prime rate and (iii) LIBOR plus 1%. Interest is payable at the end of each interest period that the Company may elect as a term of either one, two or three months.

The borrower under the Aggregation Facility is Vivint Solar Financing I, LLC, one of the Company’s indirect wholly owned subsidiaries, that in turn holds the Company’s interests in the managing members in the Company’s existing investment funds. These managing members guarantee the borrower’s obligations under the Aggregation Facility. In addition, Vivint Solar Holdings, Inc. has pledged its interests in the borrower, and the borrower has pledged its interests in the guarantors as security for the borrower’s obligations under the Aggregation Facility. The related solar energy systems are not subject to any security interest of the lenders, and there is no recourse to the Company in the case of a default.

The Aggregation Facility includes customary covenants, including covenants that restrict, subject to certain exceptions, the borrower's, and the guarantors' ability to incur indebtedness, incur liens, make investments, make fundamental changes to their business, dispose of assets, make certain types of restricted payments or enter into certain related party transactions. Among other restrictions, the Aggregation Facility provides that the borrower may not incur any indebtedness other than that related to the Aggregation Facility or in respect of permitted swap agreements, and that the guarantors may not incur any indebtedness other than that related to the Aggregation Facility or as permitted under existing investment fund transaction documents. These restrictions do not impact the Company's ability to enter into investment funds, including those that are similar to those entered into previously.

As of September 30, 2014, the Company had incurred an aggregate of \$87.0 million in term loan borrowings under this agreement, of which approximately \$75.7 million was used to repay the outstanding principal and accrued and unpaid interest under the May 2014 credit facility discussed below. The remaining borrowing capacity was \$263.0 million as of September 30, 2014. However, the Company does not have immediate access to the remaining \$263.0 million balance as future borrowings are dependent on when it has solar energy system revenue to collateralize the borrowings.

The Aggregation Facility also contains certain customary events of default. If an event of default occurs, lenders under the Aggregation Facility will be entitled to take various actions, including the acceleration of amounts due under the Aggregation Facility and foreclosure on the interests of the borrower and the guarantors that have been pledged to the lenders.

Interest expense was approximately \$0.3 million in the three and nine months ended September 30, 2014. No interest expense was recorded for the three and nine months ended September 30, 2013. As of September 30, 2014, the current portion of deferred financing costs of \$2.5 million was recorded in prepaid expenses and other current assets, and the long-term portion of deferred financing costs of \$6.1 million was recorded in other non-current assets, net in the condensed consolidated balance sheet. In addition, a \$1.5 million interest reserve amount was deposited in an interest reserve account with the administrative agent and is included in restricted cash.

#### ***Bank of America, N.A. Term Loan Credit Facility***

In May 2014, the Company entered into a term loan credit facility (the "Term Facility") for an aggregate principal amount of \$75.5 million with certain financial institutions for which Bank of America, N.A. acted as administrative agent. In September 2014, the Company repaid the then outstanding \$75.5 million in aggregate borrowings and terminated the agreement. Under the Term Facility, the Company incurred interest on the term borrowings that accrued at a floating rate based on (1) LIBOR plus a margin equal to 4%, or (2) a rate equal to 3% plus the greatest of (a) the Federal Funds Rate plus 0.5%, (b) the administrative agent's prime rate and (c) LIBOR plus 1%. Interest expense from inception of the Term Facility in May 2014 through payoff in September 2014 was approximately \$1.3 million.

The credit facility included customary covenants, including covenants that restricted, subject to certain exceptions, the Company's ability to incur indebtedness, incur liens, make investments, make fundamental changes to the Company's business, dispose of assets, make certain types of restricted payments or enter into certain related party transactions. As of payoff, the Company was in compliance with all such covenants. In addition, the \$1.6 million interest reserve amount that was deposited in an interest reserve account with the administrative agent was released upon termination of the agreement.

#### ***Revolving Lines of Credit — Related Party***

In May 2013, the Company entered into a Subordinated Note and Loan Agreement with APX Parent Holdco, Inc., pursuant to which the Company may incur up to \$20.0 million in revolver borrowings ("2013 Loan Agreement"). From May 2013 through December 2013, the Company incurred \$18.5 million in principal borrowings under the agreement. Interest accrued on these borrowings at 12% per year through November 2013 and 20% per year thereafter, and accrued interest is paid-in-kind through additions to the principal amount on a semi-annual basis. In January 2014, the Company amended and restated the 2013 Loan Agreement, pursuant to which the Company may incur an additional \$30.0 million in revolver borrowings, resulting in a total borrowing capacity of \$50.0 million, with interest on the borrowings accruing at a rate of 12% per year for the remaining term of the agreement. From January 2014 through September 2014, the Company incurred an aggregate of \$154.5 million in revolver borrowings under the 2013 Loan Agreement of which \$141.5 million was repaid within one to eight days from the respective borrowing date. None of these borrowings individually exceeded the borrowing capacity of \$50.0 million. As of September 30, 2014, the Company had \$31.5 million of principal borrowings outstanding and \$18.5 million in borrowing capacity available under the agreement. Interest expense for the three months ended September 30, 2014 and 2013 was \$1.0 million and \$0.6 million. Interest expense for the nine months ended September 30, 2014 and 2013 was \$3.0 million and \$0.7 million. While prepayments are permitted, the principal amount and accrued interest is payable by the Company upon the earliest to occur of (1) a change of control, (2) an event of default, and (3) January 1, 2017. The Company's obligation under the 2013 Loan Agreement is subordinate to the Company's guaranty obligations to its investment funds and all other indebtedness of the Company.

In December 2012 and amended in July 2013, the Company entered into a Subordinated Note and Loan Agreement with Vivint pursuant to which the Company may incur revolver borrowings of up to \$20.0 million ("2012 Loan Agreement"). In December 2012, the Company incurred \$15.0 million in revolver borrowings. From January 2013 through May 2013, the Company incurred an additional \$5.0 million in revolver borrowings. Interest accrues on these borrowings at 7.5% per year, and accrued interest is paid-in-kind through additions to the principal amount on a semi-annual basis. Interest expense for the three months ended September 30, 2014 and 2013 was \$0.4 million in both periods. Interest expense for the nine months ended September 30, 2014 and 2013 was \$1.2 million and \$1.0 million. While prepayments are permitted, the principal amount and accrued interest is payable by the Company upon the earliest to occur of (1) a change of control, (2) an event of default and (3) January 1, 2016. As of September 30, 2014, the Company had an aggregate of \$0 in borrowing capacity available under the \$20.0 million agreement. The Company's obligations under the 2012 Loan Agreement are subordinate to the Company's guaranty obligations to its investment funds and all other indebtedness of the Company.

As of September 30, 2014 and December 31, 2013, the total borrowings under both the 2012 Loan Agreement and the 2013 Loan Agreement were \$58.7 million and \$41.4 million. These amounts include \$51.5 million and \$38.5 million of principal borrowings and \$7.2 million and \$2.9 million of paid-in-kind and accrued interest.

## 10. Investment Funds

The Company has formed investment funds and raised capital to fund the purchase of solar energy systems that will be contributed to or purchased by the investment fund. For discussion purposes, these 11 investment funds, including one arrangement with a large financial institution, are referred to as Fund A through Fund K.

The Company has aggregated the financial information of the investment funds in the table below. The aggregate carrying value of these funds' assets and liabilities (after elimination of intercompany transactions and balances) in the Company's condensed consolidated balance sheets were as follows (in thousands):

	September 30, 2014	December 31, 2013
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 8,986	\$ 3,092
Accounts receivable, net	1,688	544
Total current assets	10,674	3,636
Solar energy systems, net	408,035	152,565
Total assets	<u>\$ 418,709</u>	<u>\$ 156,201</u>
<b>Liabilities</b>		
Current liabilities:		
Distributions payable to non-controlling interests and redeemable non-controlling interests	\$ 3,879	\$ 1,576
Current portion of deferred revenue	135	68
Total current liabilities	4,014	1,644
Deferred revenue, net of current portion	2,447	1,272
Total liabilities	<u>\$ 6,461</u>	<u>\$ 2,916</u>

Fund investors for Funds D, E and H are managed indirectly by the Sponsor and accordingly are considered related parties. As of September 30, 2014 and December 31, 2013, the cumulative total of contributions into the VIEs by all investors was \$381.6 million and \$140.7 million, of which \$110.0 million and \$60.0 million were contributed by related parties.

All funds, except for Funds F and K, were operational as of September 30, 2014. The Company did not have any assets, liabilities or activity associated with Funds F and K. Total available committed capital under Funds F and K was \$150.0 million as of September 30, 2014.

### Guarantees

With respect to the investment funds, the Company and the fund investors have entered into guaranty agreements under which the Company guarantees the performance of certain obligations of its subsidiaries to the investment funds. These guarantees do not result in the Company being required to make payments to the fund investors unless such payments are mandated by the investment fund governing documents and the investment fund fails to make such payment. The Company is also contractually obligated to make certain VIE investors whole for losses that the investors may suffer in certain limited circumstances resulting from the disallowance or recapture of investment tax credits.

As a result of the guaranty arrangements in certain funds, as of September 30, 2014 and December 31, 2013, the Company is required to hold minimum cash balances of \$5.0 million in the aggregate for both periods, which are classified as restricted cash on the condensed consolidated balance sheets.

## 11. Redeemable Non-Controlling Interests and Equity

### Common Stock

The Company had shares of common stock reserved for issuance as follows:

	September 30, 2014	December 31, 2013
Options issued and outstanding	10,057,738	6,608,826
Options available for grant under equity incentive plans	8,800,000	2,567,645
Long-term incentive plan	4,058,823	4,058,823
Total	<u>22,916,561</u>	<u>13,235,294</u>

In August 2014, the Company issued and sold an aggregate of 2,671,875 shares of common stock to 313 for \$10.667 per share for aggregate proceeds of \$28.5 million. In September 2014, the Company issued and sold an aggregate of 7,031,247 additional shares to 313 and two of its directors for \$10.667 per share for aggregate gross proceeds of \$75.0 million. The Company intended for the proceeds from such sales to fund its growing operations without altering its plans and to bolster its financial condition in advance of its initial public offering. The transactions were negotiated on an arms' length basis and represented what the Company believed to be the most agreeable alternative at the time. Subsequent to such transactions, the Company set the preliminary price range for its initial public offering, the mid-point of which was \$17.00 per share. The Company has determined that, for financial reporting purposes, it is appropriate to record the aggregate difference between the per share purchase price and mid-point of the preliminary price range for its initial public offering with respect to the shares sold to the two directors, or \$14.8 million, as stock-based compensation expense, which was recorded in general and administrative expense. Regarding the shares of common stock sold to 313, the Company has also determined that for financial reporting purposes, it is appropriate to record the aggregate difference of \$43.4 million as an aggregate return of capital within additional paid-in capital.

### Redeemable Non-Controlling Interests, Total Equity and Non-Controlling Interests

The changes in redeemable non-controlling interests were as follows (in thousands):

Balance as of December 31, 2013	\$	73,265
Contributions from redeemable non-controlling interests		54,973
Distributions to redeemable non-controlling interests		(4,282)
Net loss		(1,001)
Balance as of September 30, 2014	<u>\$</u>	<u>122,955</u>

The changes in total stockholders' equity and non-controlling interests were as follows (in thousands):

	Total Stockholders' Equity	Non-controlling Interests	Total Equity
Balance as of December 31, 2013	\$ 78,833	\$ 1,788	\$ 80,621
Capital contributions	103,500	—	103,500
Stock-based compensation expense	20,846	—	20,846
Noncash capital contributions	181	—	181
Contributions from non-controlling interests	—	185,890	185,890
Distributions to non-controlling interests	—	(3,504)	(3,504)
Net loss	(22,744)	(104,102)	(126,846)
Balance as of September 30, 2014	<u>\$ 180,616</u>	<u>\$ 80,072</u>	<u>\$ 260,688</u>

Funds A, B, C and I each include a right for the non-controlling interest holder to elect to require the Company's wholly owned subsidiary to purchase all of its membership interests in the fund after a stated period of time (each, a "Put Option"). In Fund A, the Company's wholly owned subsidiary has the right to elect to require the non-controlling interest holder to sell all of its membership units to the Company's wholly owned subsidiary (the "Call Option") after the expiration of the non-controlling interest holder's Put

Option. In Funds B, C and I, the Company's wholly owned subsidiary has a Call Option for a stated period prior to the effectiveness of the Put Option. In Funds D, E, G, H, J and K there is a Call Option which is exercisable after a stated period of time.

The purchase price for the fund investor's interest in Funds A, B, C and I under the Put Options is the greater of fair market value at the time the option is exercised and \$0.7 million, \$2.1 million, \$3.3 million and \$4.1 million. The Put Options for Funds A, B, C and I are exercisable beginning on the date that specified conditions are met for each respective fund. None of the Put Options are expected to become exercisable prior to 2017.

Because the Put Options represent redemption features that are not solely within the control of the Company, the non-controlling interests in these funds is presented outside of permanent equity. Redeemable non-controlling interests are reported using the greater of their carrying value at each reporting date (which is impacted by attribution under the hypothetical liquidation at book value method) or their estimated redemption value in each reporting period. The carrying value of redeemable non-controlling interests at September 30, 2014 and December 31, 2013 was greater than the redemption value.

The purchase price for the fund investors' interests under the Call Options varies by fund, but is generally the greater of a specified amount, which ranges from approximately \$0.7 million to \$7.0 million, the fair market value of such interest at the time the option is exercised, or an amount that causes the fund investor to achieve a specified return on investment. The Call Options for Funds A, B, C, D, E, H, J and K are exercisable beginning on the date that specified conditions are met for each respective fund. None of the Call Options are expected to become exercisable prior to 2018.

## **12. Equity Compensation Plans**

### ***2014 Equity Incentive Plan***

The Company adopted the 2014 Equity Incentive Plan (the "2014 Plan"), which became effective upon the effectiveness of the Company's registration statement on Form S-1, on September 30, 2014. Under the 2014 Plan, the Company may grant stock options, restricted stock, restricted stock units, stock appreciation rights, performance units, performance shares and performance awards to its employees, directors and consultants, and its parent and subsidiary corporations' employees and consultants.

Under the 2014 Plan, a total of 8,800,000 shares of common stock initially are reserved for issuance, subject to adjustment in the case of certain events, of which no awards were issued and outstanding as of September 30, 2014. In addition, any shares that otherwise would be returned to the Omnibus Plan (as defined below) as the result of the expiration or termination of options, may be added to the 2014 Plan. The number of shares available for issuance under the 2014 Plan is subject to an annual increase on the first day of each year beginning in 2015, equal to the least of 8,800,000 shares, 4% of the outstanding shares of common stock as of the last day of the immediately preceding fiscal year and an amount of shares as determined by the Company.

### ***2013 Omnibus Incentive Plan; Non-plan Option Grant***

In July 2013, the Company adopted the 2013 Omnibus Incentive Plan (the "Omnibus Plan"), which was terminated in connection with the adoption of the 2014 Plan in September 2014, and accordingly no additional shares are available for issuance under the Omnibus Plan. The Omnibus Plan will continue to govern outstanding awards granted under the plan. In August 2013, the Company granted an option to purchase 617,647 shares of common stock outside of the Omnibus Plan; however the provisions of this option were substantially similar to those of the options granted pursuant to the Omnibus Plan.

During the third quarter of 2013 and the first nine months of 2014, the Company granted options of which one-third are subject to ratable time-based vesting over a five year period and two-thirds are subject to vesting upon certain performance conditions and the achievement of certain investment return thresholds by 313.

In April 2014, the Company amended the vesting schedules of certain options outstanding under the Omnibus Plan and an option granted outside of the Omnibus Plan described above to provide that a portion of each of these options vests upon the Company's aggregate market capitalization being equal to or exceeding \$1.0 billion at the end of any trading day at least 240 days following the completion of the Company's public offering.

During the three and nine months ended September 30, 2014, the Company recorded \$3.8 million in stock-based compensation related to the performance conditions as it is now probable that the performance condition will be met. In prior periods, all recognized stock compensation expense was related to the time-based vesting conditions. As of September 30, 2014, there are 6.7 million shares subject to outstanding options that are subject to performance and market conditions.

A summary of stock option activity is as follows (in thousands, except share and per share amounts):

	Shares Underlying Options	Weighted- Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding—December 31, 2013	6,609	\$ 1.00		\$ 12,755
Granted	3,493	1.60		
Exercised	—	—		
Cancelled	(44)	1.00		
Outstanding—September 30, 2014	10,058	\$ 1.21	—	\$ 148,787
Options vested and exercisable – December 31, 2013	186	\$ 1.00	9.5	\$ 359
Options vested and exercisable—September 30, 2014	435	\$ 1.01	8.9	\$ 6,520
Options vested and expected to vest—December 31, 2013	2,001	\$ 1.00	9.6	\$ 3,862
Options vested and expected to vest—September 30, 2014	8,377	\$ 1.20	9.0	\$ 123,898

The weighted-average grant-date fair value of time-based options granted during the nine months ended September 30, 2014 and 2013 was \$4.69 and \$0.91 per share. The weighted-average grant-date fair value of performance-based options granted during the nine months ended September 30, 2014 and 2013 was \$2.80 and \$2.23 per share. There were no options exercised during the periods presented. Intrinsic value is calculated as the difference between the exercise price of the underlying options and the fair value of the common stock for the options that had exercise prices that were lower than the fair value per share of the common stock.

As of September 30, 2014 and December 31, 2013, there were approximately \$15.1 million and \$4.9 million of total unrecognized stock-based compensation expense, net of estimated forfeitures related to nonvested time-based and performance condition stock options. As of September 30, 2014 and December 31, 2013, the time-based awards are expected to be recognized over the weighted average period of 2.6 years and 2.7 years. As of September 30, 2014, the performance-based awards are expected to be recognized over a weighted period of 2.2 years.

The total fair value of options vested for the nine months ended September 30, 2014 and 2013 was \$0.3 million and zero.

#### ***Long-term Incentive Plan***

In July 2013, the Company's board of directors approved 4,058,823 shares of common stock for six Long-term Incentive Plan Pools ("LTIP Pools") that comprise the 2013 Long-term Incentive Plan (the "LTIP"). The purpose of the LTIP is to attract and retain key service providers and strengthen their commitment to the Company by providing incentive compensation measured by reference to the value of the shares of the Company's common stock. Eligible participants include nonemployees, which is comprised of direct sales personnel, who sell the solar energy system contracts, employees that install and maintain the solar energy systems and employees that recruit new employees to the Company.

Based on the terms of the agreement, participants are allocated a portion of the LTIP Pools relative to the performance of other participants. LTIP awards to employees are considered to be granted when the allocation of the LTIP Pools to each participant is fixed which occurs once performance and service conditions are met. The performance conditions include the execution of a public offering or change of control or a declaration of a payment by the compensation committee. In addition, after the performance condition is achieved, participants must fulfill service or other conditions based on shareholder return to vest in the award. Expense associated with the units will be recognized once the units have been granted to individual participants.

The Company amended five of six of the LTIP Pools in April 2014 and the final pool in August 2014. The amendment modified the date on which each participant's award is fixed from the date of a public offering to a subsequent date based on fulfilling certain service or other performance conditions based on stockholder returns, which will be the same date on which the award vests. No LTIP awards have been granted to employees as of September 30, 2014.

Nonemployee awards are granted and will be measured on the date on which the performance is complete which is the date the service or other performance conditions are achieved. The Company recognizes stock-based compensation expense based on the lowest aggregate fair value of the non-employee awards at the reporting date. The Company has not recognized any expense related to the LTIP in any of the periods presented.

### Determination of Fair Value of Stock Options

The Company estimates the fair value of the time-based stock options granted on each grant date using the Black-Scholes-Merton option pricing model and applies the accelerated attribution method for expense recognition. The Company estimates the fair value and the vesting period of the performance-based options granted on each grant date using the Monte Carlo simulation method. The fair values using the Black-Scholes-Merton method were estimated on each grant date using the following weighted-average assumptions:

	Nine Months Ended September 30,	
	2014	2013
Expected term (in years)	6.2	6.3
Volatility	87.1%	80.0%
Risk-free interest rate	1.9%	1.7%
Dividend yield	0.0%	0.0%

The fair values using the Monte Carlo Simulation method were estimated on each grant date using the following weighted-average assumptions:

	Nine Months Ended September 30,	
	2014	2013
Volatility	80.0%	80.0%
Risk-free interest rate	2.7%	2.6%

Stock-based compensation was included in operating expenses as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Cost of revenue—operating leases and incentives	\$ 710	\$ 44	\$ 765	\$ 44
Sales and marketing	421	51	611	51
General and administrative	18,899	241	19,470	241
Total stock-based compensation	<u>\$ 20,030</u>	<u>\$ 336</u>	<u>\$ 20,846</u>	<u>\$ 336</u>

In September 2014, the Company recorded \$14.8 million of stock-based compensation expense in general and administrative expense related to the sale of shares of common stock to two of its directors as discussed in Note 11 —Redeemable Non-controlling Interests and Equity .

### 13. Income Taxes

The income tax (benefit) expense for the three months ended September 30, 2014 and 2013 was determined based on the Company's consolidated quarterly effective income tax rate of 16.5% and -0.2%. For the nine months ended September 30, 2014 and 2013, the Company's consolidated quarterly effective income tax rate was 2.5% and -0.2%. The variations between the consolidated quarterly effective income tax rates and the U.S. federal statutory rate were primarily attributable to the effect of non-controlling interests and redeemable non-controlling interests, changes in a valuation allowance, the current amortization of the prepaid income taxes due to intercompany sales held within the consolidated group, tax credits, state income taxes and nondeductible expenses.

The Company sells solar energy systems to the investment funds. As the investment funds are consolidated by the Company, the gain on the sale of the assets has been eliminated in the condensed consolidated financial statements. These transactions are treated as intercompany sales and any tax expense incurred related to these sales is being deferred and amortized over the estimated useful life of the underlying systems which has been estimated to be 30 years. The deferral of the tax expense results in recording of a prepaid tax asset. As of September 30, 2014 and December 31, 2013, the Company recorded a long-term prepaid tax asset of \$76.6 million and \$30.7 million, net of amortization.

#### Uncertain Tax Positions

As of September 30, 2014 and December 31, 2013, the Company had no unrecognized tax benefits. There was no interest and penalties accrued for any uncertain tax positions as of September 30, 2014 and December 31, 2013. The Company does not have any tax positions for which it is reasonably possible the total amount of gross unrecognized benefits will increase or decrease within the

next 12 months. The Company is subject to taxation and files income tax returns in the United States, and various state and local jurisdictions. Due to the Company's net losses, substantially all of its federal, state and local income tax returns since inception are still subject to audit.

#### 14. Related Party Transactions

The Company's operations included the following related party transactions (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Cost of revenue—operating leases and incentives	\$ 2,139	\$ 401	\$ 5,524	\$ 1,000
Sales and marketing	610	285	956	573
General and administrative	310	1,089	3,220	1,572
Interest expense(1)	1,460	998	4,338	1,921

(1) Includes revolving lines of credit—related party. See Note 9—Debt Obligations.

##### *Vivint Services*

In conjunction with the Company's registration statement on Form S-1, which became effective on September 30, 2014, the Company negotiated and entered into a number of agreements with Vivint related to services and other support that Vivint provided and will provide to the Company following its initial public offering. These agreements included the following: Master Intercompany Framework Agreement, Non-competition Agreement, Transition Services Agreement, Product Development and Supply Agreement, Marketing and Customer Relations Agreement, Bill of Sale and Trademark License Agreement. As more fully described in the Prospectus, under certain of these agreements, the Company may be obligated to pay fees to, or may be entitled to receive fees from, Vivint. The Company did not enter into any transactions under these agreements during the three or nine months ended September 30, 2014.

In June 2013, the Company entered into a full service sublease agreement (the "Sublease Agreement") with Vivint, which was applied retroactively to be in effect as of January 1, 2013. Under the Sublease Agreement, Vivint provided various administrative services, such as management, human resources, information technology, facilities and use of corporate office space to the Company. The Company pays Vivint a monthly services fee and rent based on headcount and square footage used. In 2011, and amended June 2013, the Company entered into a trademark / service mark license agreement ("Trademark Agreement") with Vivint, pursuant to which the Company paid Vivint a monthly fee in exchange for rights to use certain trademarks, based on kilowatt hours produced by the solar energy systems each month. In June 2013, the Trademark Agreement was amended and restated to grant the Company a royalty-free, non-exclusive license to use certain Vivint marks, subject to certain quality control requirements and was applied retroactively to be in effect as of January 1, 2013.

The Company incurred fees under these agreements of \$2.4 million and \$0.8 million for the three months ended September 30, 2014 and 2013 reflecting the amount of services provided by Vivint on behalf of the Company. The Company incurred fees under these agreements of \$6.6 million and \$1.9 million for the nine months ended September 30, 2014 and 2013.

Payables to Vivint recorded in accounts payable—related party were de minimis and \$3.1 million as of September 30, 2014 and December 31, 2013. These payables include amounts due to Vivint related to the services agreements and additional costs allocated, as well as other miscellaneous intercompany payables including freight, healthcare cost reimbursements and ancillary purchases.

##### *313 Incentive Units Plan*

Incentive units from 313 have been granted to certain board members of the Company. Such board members are also employees of Vivint. As a result, the related compensation expense has been allocated between the two companies based on the net equity of the respective companies at the Acquisition. The Company recorded expense of \$0.1 million and \$0.2 million and a corresponding noncash capital contribution from 313 during the three and nine months ended September 30, 2014. Expenses incurred relating to these 313 grants were de minimis and \$0.1 million during the three and nine months ended September 30, 2013. The incentive units are subject to time-based and performance-based vesting conditions, with one-third subject to ratable time-based vesting over a five year period and two-thirds subject to the achievement of certain investment return thresholds by the sponsor and its affiliates. 313 has determined that it is not probable that the performance conditions will be achieved, and as such, all allocated stock compensation expense is related to the time-based vesting conditions during the three and nine months ended September 30, 2014 and 2013. The fair value of stock-based awards is measured at the grant date and is recognized as expense over the board members' requisite service period.

### ***Advisory Agreements***

In May 2014, the Company entered into an advisory agreement with Blackstone Advisory Partners L.P., an affiliate of the Sponsor (“BAP”), under which BAP will provide financial advisory and placement services related to the Company’s financing of residential solar energy systems. Under the agreement, the Company is required under certain circumstances to pay a placement fee to BAP ranging from 0.75% to 1.5% of the transaction capital, depending on the identity of the investor and whether the financing relates to residential or commercial projects. This agreement replaced the 2013 advisory agreement described below.

Effective May 2013, the Company entered into an advisory agreement with BAP that provided financial advisory and placement services related to the Company’s financing of residential solar energy systems. Under the agreement, BAP was paid a placement fee ranging from 0% to 2% of the transaction capital, depending on the identity of the investor and how contact with the investor is established. The Company incurred fees under these agreements of zero and \$0.8 million for the three months ended September 30, 2014 and 2013. The Company incurred fees under these agreements of \$2.2 million and \$0.8 million for the nine months ended September 30, 2014 and 2013. The amounts were recorded in general and administrative expense in the Company’s condensed consolidated statements of operations.

### ***Advances Receivable — Related Party***

Amounts due from direct-sales personnel were \$2.0 million and \$0.7 million as of September 30, 2014 and December 31, 2013. The Company provided a reserve of \$1.2 million and \$0.4 million as of September 30, 2014 and December 31, 2013 related to advances to direct-sales personnel who have terminated their employment agreement with the Company.

### ***Transactions with 313 and Directors***

In August and September 2014, the Company issued and sold shares of common stock to 313 and two of its directors as discussed in Note 11 —Redeemable Non-controlling Interests and Equity. In April 2013, the Company received a \$1.4 million capital contribution from 313. No other cash contributions were received during the nine months ended September 30, 2014 and 2013.

### ***Investment Funds***

Fund investors for Funds D, E and H are indirectly managed by the Sponsor and accordingly are considered related parties. See Note 10—Investment Funds. In July 2014, the Company also entered into a Backup Maintenance Servicing Agreement with Vivint in which Vivint will provide maintenance servicing of the fund assets in the event that the Company is removed as the service provider for Funds J and K. No services have been performed by Vivint under this agreement.

## **15. Commitments and Contingencies**

### ***Capital Leases***

The Company leases fleet vehicles which are accounted for as capital leases and are included in property, net.

### ***Non-Cancellable Operating Leases***

In May 2014, the Company entered into non-cancellable leases in anticipation of relocating its corporate office space to Lehi, Utah (the “Prior Leases”). As noted below under “Build-to-Suit Lease Arrangements,” the Prior Leases were determined to achieve sale-leaseback accounting upon construction completion in September 2014 and are now classified as operating leases. Pursuant to a termination agreement and new leases (the “New Leases”), the Company will terminate the Prior Leases upon construction completion of office space in an adjacent building in Lehi, Utah. Under the Prior Leases, the Company will make lease payments of approximately \$0.2 million in 2014, and \$1.1 million in 2015 – the end of the non-cancellable lease term for the Prior Leases as a result of the termination agreement.

In July 2014, the Company entered into non-cancellable operating leases in anticipation of moving certain of its operations to Orem, Utah. Under these agreements, the Company will make lease payments of approximately \$0.4 million for the remainder of 2014 and \$1.0 million to \$1.5 million per year from 2015 to 2017.

The Company entered into lease agreements for warehouses and related equipment from 2011 through 2013, located in states in which the Company conducts operations. As part of the acquisition of Solmetric in January 2014, the Company added an additional lease agreement for Solmetric office space. The equipment lease agreements, the longest of which is 12-months, include basic renewal options for an additional set period, continued renting by the month, or return of the unit.

For all non-cancellable lease arrangements, there are no bargain renewal options, penalties for failure to renew, or any guarantee by the Company of the lessor's debt or a loan from the Company to the lessor related to the leased property. These leases have been classified and accounted for as non-cancellable operating leases. Aggregate operating lease expense was \$1.2 million and \$0.3 million for the three months ended September 30, 2014 and 2013. Aggregate operating lease expense was \$2.6 million and \$0.8 million for the nine months ended September 30, 2014 and 2013.

#### ***Build-to-Suit Lease Arrangements***

In September 2014, the Company entered into a non-cancellable lease with an affiliate of its landlord of the Prior Leases whereby the Company will move into another building being constructed by the affiliate in the same general location. It is anticipated that this new building will be completed during the first quarter of 2016. At the time the new building is completed, the Prior Leases will be cancelled. The terms of the New Leases are similar to those of the Prior Leases, with the exception that the Company will be leasing additional space. Under the New Leases, the Company will make lease payments of approximately \$3.1 million to \$3.6 million per year from 2016 to 2020. The Company will be deemed the owner of the building for accounting purposes during the construction period due to the terms of the New Leases.

Because of its involvement in certain aspects of the construction related to the Prior Leases, the Company was previously deemed the owner of the building for accounting purposes during the construction period. Accordingly, the Company had recorded assets of \$18.6 million, included in property, net, and a corresponding build-to-suit lease liability as of June 30, 2014 related to the Prior Leases. Upon completion of construction in September 2014, the Company determined the transaction qualified for sale-leaseback accounting and therefore the \$18.6 million in assets and liabilities related to the Prior Leases were de-recognized in September 2014, with no gain or loss recognized.

#### ***Indemnification Obligations***

From time to time, the Company enters into contracts that contingently require it to indemnify parties against claims. These contracts primarily relate to provisions in the Company's services agreements with related parties that may require the Company to indemnify the related parties against services rendered; and certain agreements with the Company's officers and directors under which the Company may be required to indemnify such persons for liabilities. In addition, under the terms of the agreements related to the Company's investment funds and other material contracts, the Company may also be required to indemnify fund investors and other third parties for liabilities. The Company has not recorded a liability related to these indemnification provisions and the indemnification arrangements have not had any significant impact to the Company's condensed consolidated financial statements to date.

#### ***Legal Proceedings***

In December 2013, one of the Company's former sales representatives, on behalf of himself and a purported class, filed a complaint for unspecified damages, injunctive relief and restitution in the Superior Court of the State of California in and for the County of San Diego against Vivint Solar Developer, LLC, one of the Company's subsidiaries, and unnamed John Doe defendants. This action alleges certain violations of the California Labor Code and the California Business and Professions Code based on, among other things, alleged improper classification of sales representatives and sales managers, failure to pay overtime compensation, failure to provide meal periods, failure to provide accurate itemized wage statements, failure to pay wages on termination and failure to reimburse expenses. The complaint also seeks penalties of an unspecified amount associated with the alleged violations, interest on all economic damages and reasonable attorney's fees and costs. In addition, the complaint requests an injunction, which would enjoin the Company from similar violations of California's Labor Code and Business and Professions Code, and restitution of costs to the plaintiff and purported class members under California's unfair competition law. In January 2014, the Company filed an answer denying the allegations in the complaint and asserting various affirmative defenses. The parties are currently engaged in limited discovery and have agreed to participate in mediation. The Company has recorded a \$0.4 million reserve related to this proceeding in its condensed consolidated financial statements.

In September 2014, two former installation technicians of the Company, on behalf of themselves and a purported class, filed a complaint for damages, injunctive relief and restitution in the Superior Court of the State of California in and for the County of San Diego against the Company and unnamed John Doe defendants. The complaint alleges certain violations of the California Labor Code and the California Business and Professions Code based on, among other things, alleged improper classification of installer technicians, installer helpers, electrician technicians and electrician helpers, failure to pay minimum and overtime wages, failure to provide accurate itemized wage statements, and failure to provide wages on termination. The Company believes that it has strong defenses to the claims asserted in this matter. Although we cannot predict with certainty the ultimate resolution of this suit, we do not believe it will have a material adverse effect on our business, results of operations, cash flows or financial condition.

In May 2014, Vivint made the Company aware that the U.S. Attorney's office for the State of Utah is engaged in an investigation that Vivint believes relates to certain political contributions made by some of Vivint's executive officers that are directors of the Company and some of Vivint's employees. The Company has no reason to believe that it, the executive officers or employees are targets of such investigation.

In addition to the matters discussed above, in the normal course of business, the Company has from time to time been named as a party to various legal claims, actions and complaints. While the outcome of these matters cannot be predicted with certainty, the Company does not currently believe that the outcome of any of these claims will have a material adverse effect, individually or in the aggregate, on its condensed consolidated financial position, results of operations or cash flows.

The Company accrues for losses that are probable and can be reasonably estimated. The Company evaluates the adequacy of its legal reserves based on its assessment of many factors, including interpretations of the law and assumptions about the future outcome of each case based on available information.

#### 16. Basic and Diluted Net Income (Loss) Per Share

The Company computes basic earnings (loss) per share by dividing net earnings or loss available to common stockholders by the weighted average number of common shares outstanding for the period. Diluted earnings per share reflects the potential dilution of securities that could be exercised or converted into common shares, and is computed by dividing net earnings or loss available to common stockholders by the weighted average number of common shares outstanding plus the effect of potentially dilutive shares to purchase common stock.

The following table sets forth the computation of the Company's basic and diluted net (loss attributable) income available per share to common stockholders for the three and nine months ended September 30, 2014 and 2013 (in thousands, except share and per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
<b>Numerator:</b>				
Net (loss attributable) income available to common stockholders	\$ (35,278)	\$ 22,855	\$ (22,744)	\$ 2,421
<b>Denominator:</b>				
Shares used in computing net (loss attributable) income available per share to common stockholders, basic	78,428,498	75,000,000	76,159,639	75,000,000
Weighted-average effect of potentially dilutive shares to purchase common stock	—	912	—	13,624
Shares used in computing net (loss attributable) income available per share to common stockholders, diluted	<u>78,428,498</u>	<u>75,000,912</u>	<u>76,159,639</u>	<u>75,013,624</u>
Net (loss attributable) income available per share to common stockholders				
Basic	<u>\$ (0.45)</u>	<u>\$ 0.30</u>	<u>\$ (0.30)</u>	<u>\$ 0.03</u>
Diluted	<u>\$ (0.45)</u>	<u>\$ 0.30</u>	<u>\$ (0.30)</u>	<u>\$ 0.03</u>

For the three and nine months ended September 30, 2014, the Company incurred net losses attributable to common stockholders. As such, the potentially dilutive shares were anti-dilutive and were not considered in weighted average number of common shares outstanding for those periods.

#### 17. Subsequent Events

##### *Initial Public Offering*

On October 6, 2014, the Company closed its initial public offering in which 20,600,000 shares of its common stock were sold at a public offering price of \$16.00 per share, resulting in net proceeds of \$300.8 million, after deducting underwriting discounts and commissions and \$8.6 million in offering expenses payable by the Company. The offering costs were recorded in other non-current assets, net in the Company's consolidated balance sheet as of September 30, 2014.

***Repayment of Revolving Lines of Credit — Related Party***

On October 9, 2014, the Company repaid \$58.8 million in aggregate borrowings owed to Vivint under the 2013 Loan Agreement and the 2012 Loan Agreement, which was comprised of the September 30, 2014 balance of \$58.7 million plus accrued interest for the first nine days of October. The loan agreements were terminated upon repayment.

***Investment Fund***

In October 2014, a wholly owned subsidiary of the Company entered into a solar investment fund arrangement with a fund investor. The total commitment under the solar investment fund arrangement is \$5.0 million. The Company has not yet completed its assessment of whether the fund arrangement is a VIE.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Forward-looking Statements

*This section should be read in conjunction with our unaudited condensed consolidated financial statements and related notes included in Part 1, Item 1 of this report. This discussion contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are identified by words such as "believe," "anticipate," "expect," "intend," "plan," "will," "may," "seek" and other similar expressions. You should read these statements carefully because they discuss future expectations, contain projections of future results of operations or financial condition or state other "forward-looking" information. These statements relate to our future plans, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements. These forward-looking statements include, but are not limited to:*

- federal, state and local regulations and policies governing the electric utility industry;
- the regulatory regime for our offerings and for third-party owned solar energy systems;
- technical limitations imposed by operators of the power grid;
- the continuation of tax rebates, credits and incentives, including changes to the rates of the income tax credit ("ITC") beginning in 2017;
- the price of utility-generated electricity and electricity from other sources;
- our ability to finance the installation of solar energy systems;
- our ability to sustain and manage growth;
- our ability to further penetrate existing markets, expand into new markets and expand into markets for non-residential solar energy systems;
- our relationship with Vivint and our sponsor;
- our expected use of proceeds from our initial public offering;
- our ability to manage our supply chain;
- the cost of solar panels and the residual value of solar panels after the expiration of our customer contracts;
- our ability to maintain our brand and protect our intellectual property; and
- our expectations regarding remediation of the material weakness in our internal control over financial reporting.

*In combination with the risk factors we have identified, we cannot assure you that the forward-looking statements in this report will prove to be accurate. Further, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all, or as predictions of future events. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.*

### Overview

We offer distributed solar energy to residential customers based on long-term contracts at prices below their current utility rates. Our customer focus, neighborhood-driven direct-to-home sales model, brand and operational efficiency have driven our rapid growth in solar energy installations. We believe our continued growth is disrupting the traditional electricity market by satisfying customers' demand for increased energy independence and less expensive, more socially responsible electricity generation.

We sell the electricity that our solar energy systems produce through long-term power purchase agreements or we lease our solar energy systems through long-term leases. Prior to the first quarter of 2014, all of our long-term customer contracts were structured as power purchase agreements. In the first quarter of 2014, we began offering leases to residential customers in connection with our entry into the Arizona market. Under either contract type, we install our solar energy system at our customer's home and bill the customer monthly. In the power purchase agreement structure, we charge customers a fee per kilowatt hour based on the amount of electricity the solar energy system actually produces. In the lease structure, the customer's monthly payment is fixed based on a calculation that takes into account expected solar energy generation. We provide our lease customers a production guarantee, under

which we agree to make a payment at the end of each year to the customer if the solar energy system does not meet the guaranteed production level in the prior 12-month period. The power purchase agreement and lease terms are typically for 20 years, and virtually all the rates that we charge to our customers are subject to pre-determined annual fixed percentage price escalations as specified in the customer contract. We do not believe that either form of long-term customer contract is materially more advantageous to us than the other.

We compete mainly with traditional utilities. In the markets we serve, our strategy is to price the energy we sell below prevailing retail electricity rates. As a result, the price our customers pay to buy energy from us varies depending on the state where the customer is located and the local traditional utility. In markets that are also served by other distributed solar energy system providers, the price we charge also depends on customer price sensitivity, the need to offer a compelling financial benefit and the price other solar energy companies charge in the region.

Components and direct labor comprise the substantial majority of the costs of our solar energy systems. We have adopted a commission-based compensation model for our sales force and a piece-rate compensation model for our installation personnel to allow us to operate our business with relatively low fixed costs. Under U.S. generally accepted accounting principles, or GAAP, the cost of revenue from our long-term customer contracts is comprised of the depreciation of the cost of the solar energy systems, which are depreciated for accounting purposes over 30 years, and the amortization of initial direct costs, which are amortized over 20 years. For tax purposes, we utilize an accelerated depreciation schedule that treats our systems as five-year depreciable property, which due to tax conventions, generally depreciates the property over six years.

Our ability to offer long-term customer contracts depends in part on our ability to finance the installation of the solar energy systems by monetizing the resulting customer receivables and investment tax credits, accelerated tax depreciation and other incentives related to the solar energy systems through structured investments known as “tax equity.” As of September 30, 2014, we had raised ten investment funds to which investors such as banks and other large financial investors have committed to invest approximately \$543 million, which will enable us to install solar energy systems of total fair market value approximating \$1.3 billion. As of September 30, 2014, we had tax equity commitments to fund approximately 74 megawatts of future deployments, which we estimate to be sufficient to fund solar energy systems with a total fair market value of approximately \$370 million.

Our investment funds have adopted either the partnership or inverted lease structures. For additional detail regarding our investment funds, please see the section of the Prospectus captioned “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Investment Funds.” We have determined that we are the primary beneficiary in these partnership and inverted lease structures for accounting purposes. Accordingly, we consolidate the assets and liabilities and operating results of these partnerships in our consolidated financial statements. We recognize the fund investors’ share of the net assets of the investment funds as non-controlling interests and redeemable non-controlling interests in our condensed consolidated balance sheets. These income or loss allocations, reflected on our condensed consolidated statement of operations, can have a significant impact on our reported results of operations.

## **Recent Developments**

### ***Initial Public Offering***

On October 6, 2014, we closed our initial public offering in which we sold 20,600,000 shares of our common stock at a price of \$16.00 per share, resulting in net proceeds of \$300.8 million, after deducting underwriting discounts and commissions and \$8.6 million in offering expenses payable by us. We maintain the proceeds received in cash and cash equivalents. There has been no material change in the planned use of such proceeds from our initial public offering as described in the Prospectus.

### ***Bank of America, N.A. Aggregation Credit Facility***

In September 2014, we entered into an aggregation credit facility pursuant to which we may borrow up to an aggregate of \$350.0 million and, subject to certain conditions, up to an additional aggregate of \$200.0 million in borrowings with certain financial institutions for which Bank of America, N.A. is acting as administrative agent. As of September 30, 2014, we incurred an aggregate of \$87.0 million in term loan borrowings under this agreement, of which approximately \$75.7 million was used to repay the outstanding principal and accrued and unpaid interest under the May 2014 term loan credit facility with Bank of America, N.A. The remaining borrowing capacity was \$263.0 million as of September 30, 2014, which we are able to draw against dependent on additional solar energy system revenue being added to the portfolio.

### ***Investment Funds***

During the third quarter of 2014, we entered into two solar investment fund arrangements with fund investors. The total commitment under these investment fund arrangements was \$200.0 million.

### **Repayment of Revolving Lines of Credit — Related Party**

On October 9, 2014, we repaid \$58.8 million in aggregate borrowings owed to Vivint under loan agreements entered into in 2013 and 2012, which was comprised of the September 30, 2014 balance of \$58.7 million plus accrued interest for the first nine days of October. The loan agreements were terminated upon repayment.

### **Key Operating Metrics**

We regularly review a number of metrics, including the following key operating metrics, to evaluate our business, measure our performance, identify trends affecting our business, formulate financial projections and make strategic decisions. Some of our key operating metrics are estimates. These estimates are based on our management's beliefs and assumptions and on information currently available to management. Although we believe that we have a reasonable basis for each of these estimates, these estimates are based on a combination of assumptions that may not prove to be accurate over time, particularly given that a number of them involve estimates of cash flows up to 30 years in the future. Underperformance of the solar energy systems, payment defaults by our customers, cancellation of signed contracts, competition from other distributed solar energy companies, development in the distributed solar energy market and the energy market more broadly, technical innovation or other factors described under the section of this report captioned "Risk Factors" could cause our actual results to differ materially from our calculations. Furthermore, while we believe we have calculated these key metrics in a manner consistent with those used by others in our industry, other companies may in fact calculate these metrics differently than we do now or in the future, which would reduce their usefulness as a comparative measure. For additional information about these metrics, see the section of our Prospectus captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Operating Metrics."

- *Solar energy system installations* . Solar energy system installations represents the number of solar energy systems installed on customers' premises. Cumulative solar energy system installations represents the aggregate number of solar energy systems that have been installed on customers' premises. We track the number of solar energy system installations as of the end of a given period as an indicator of our historical growth and as an indicator of our rate of growth from period to period.
- *Megawatts installed* . Megawatts installed represents the aggregate megawatt nameplate capacity of solar energy systems that have been installed during the applicable period. Cumulative megawatts installed represents the aggregate megawatt nameplate capacity of solar energy systems that have been installed.
- *Estimated nominal contracted payments remaining* . Estimated nominal contracted payments remaining equals the sum of the remaining cash payments that our customers are expected to pay over the term of their agreements with us for systems installed as of the measurement date. For a power purchase agreement, we multiply the contract price per kilowatt-hour by the estimated annual energy output of the associated solar energy system to determine the estimated nominal contracted payments. For a customer lease, we include the monthly fees and upfront fee, if any, as set forth in the lease.
- *Estimated retained value* . Estimated retained value represents the net cash flows discounted at 6% that we expect to receive from customers pursuant to long-term customer contracts net of estimated cash distributions to fund investors and estimated operating expenses for systems installed as of the measurement date.
- *Estimated retained value under energy contracts* . Estimated retained value under energy contracts represents the estimated retained value from the solar energy systems during the typical 20-year term of our contracts.
- *Estimated retained value of renewal* . Estimated retained value of renewal represents the estimated retained value associated with an assumed 10-year renewal term following the expiration of the initial contract term. To calculate estimated retained value of renewal, we assume all contracts are renewed at 90% of the contractual price in effect at the expiration of the initial term.
- *Estimated retained value per watt* . Estimated retained value per watt is calculated by dividing the estimated retained value as of the measurement date by the aggregate nameplate capacity of solar energy systems under long-term customer contracts that have been installed as of such date, and is subject to the same assumptions and uncertainties as estimated retained value.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
Solar energy system installations	6,935	2,921	15,560	7,600
Megawatts installed	48.6	16.4	105.4	40.8

  

	September 30,	December 31,
	2014	2013
Cumulative solar energy system installations	28,856	13,296
Cumulative megawatts installed	178.2	72.8
Estimated nominal contracted payments remaining (in millions)	\$ 842.3	\$ 394.1
Estimated retained value under energy contracts (in millions)	\$ 316.7	\$ 151.2
Estimated retained value of renewal (in millions)	\$ 81.8	\$ 39.2
Estimated retained value (in millions)	\$ 398.6	\$ 190.4
Estimated retained value per watt	\$ 2.24	\$ 2.62

### Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with GAAP. GAAP require us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue, expenses, cash flows and related footnote disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates. Our future consolidated financial statements will be affected to the extent that our actual results materially differ from these estimates.

We consider our critical accounting policies and estimates to be principles of consolidation; revenue recognition; U.S. Treasury grants and investment tax credits; solar energy systems, net; solar energy performance guarantees; impairment of long-lived assets and indefinite-lived intangible assets; goodwill impairment analysis; stock-based compensation; provision for income taxes; and non-controlling interests and redeemable non-controlling interests.

There have been no material changes to our critical accounting policies and estimates during the three months ended September 30, 2014 from those disclosed in our Prospectus.

### Components of Results of Operations

#### Revenue

We classify and account for long-term customer contracts as operating leases. We consider the proceeds from solar energy system rebate incentives offered by certain state and local governments to form part of the payments under our operating leases and recognize such payments as revenue over the contract term. We record revenue from our operating leases over the term of our long-term customer contracts, which is typically 20 years. We also apply for and receive solar renewable energy credits, or SRECs, in certain jurisdictions for power generated by our solar energy systems. We generally recognize revenue related to the sale of SRECs upon delivery. The market for SRECs is extremely volatile and sellers are often able to obtain better unit pricing by selling a large quantity of SRECs. As a result, we may sell SRECs infrequently, at opportune times and in large quantities and the timing and volume of our SREC sales may lead to fluctuations in our quarterly results. During the three months ended September 30, 2014 and 2013, approximately 8% of our revenue was attributable to SREC sales in both periods and less than 1% of our revenue was attributable to state and local rebates and incentives in both periods. During the nine months ended September 30, 2014 and 2013, approximately 8% and 7% of our revenue was attributable to SREC sales and less than 1% of our revenue was attributable to state and local rebates and incentives in both periods. On occasion we have sold solar energy systems for cash. In these instances, the revenue is recognized upon the solar energy system passing inspection by the responsible city department. Subsequent to our acquisition of Solmetric Corporation in the first quarter of 2014 (the "Solmetric Acquisition"), we began recognizing revenue related to the sale of photovoltaic installation software products and devices, a portion of which consists of post-contract customer support.

The following table sets forth our revenue by major product (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
<b>Revenue:</b>				
Operating leases and incentives	\$ 7,131	\$ 2,123	\$ 15,798	\$ 3,916
Photovoltaic installation devices and software	1,108	—	2,410	—
Solar energy system sales	94	151	190	283
Total revenue	<u>\$ 8,333</u>	<u>\$ 2,274</u>	<u>\$ 18,398</u>	<u>\$ 4,199</u>

### **Operating Expenses**

#### *Cost of Revenue*

Cost of operating leases and incentives is comprised of the depreciation of the cost of the solar energy systems, which are depreciated for accounting purposes over 30 years; the amortization of initial direct costs, which are amortized over the term of the long-term customer contract; warehouse rent; utilities; fleet vehicle executory costs; and the indirect costs related to the processing, account creation, design, installation and interconnection of solar energy systems, such as personnel costs not directly associated to a solar energy system installation, which are not capitalized. Under our direct sales model, a vast majority of payments to our direct sales personnel consist of commissions attributable to long-term customer contract acquisition. Capitalized initial direct costs consist of these commissions and other customer acquisition expenses. The cost of operating leases and incentives related to the sales of SRECs is limited to broker fees, which are only paid in connection with certain transactions. Accordingly, the sale of SRECs in a quarter favorably impacts our operating results for that period. In future periods, we anticipate that the cost of operating leases and incentives revenue will continue to increase in absolute dollars as we continue to expand sales coverage.

Cost of solar energy system and product sales consists of direct and indirect material and labor costs for solar energy systems. It also consists of materials, personnel costs, depreciation, facilities costs, other overhead costs and infrastructure expenses associated with the manufacturing of the photovoltaic installation software products and devices.

#### *Sales and Marketing Expenses*

Sales and marketing expenses include personnel costs, such as salaries, benefits, bonuses, sales commissions and stock-based compensation for our corporate sales and marketing employees and exclude costs related to our direct sales personnel that are accounted for as cost of revenue. Sales and marketing expenses also include advertising, promotional and other marketing-related expenses; certain allocated corporate overhead costs related to facilities and information technology; travel and professional services. In future periods, we anticipate sales and marketing costs to increase significantly in absolute dollars as we continue to grow our headcount for sales employees and undertake new marketing initiatives to continue to grow our business.

#### *Research and Development*

Research and development expense is comprised primarily of the salaries and benefits of certain Solmetric employees and other costs related to the development of photovoltaic installation software products and devices. Research and development costs are charged to expense when incurred. In future periods, we anticipate research and development costs to increase in absolute dollars.

#### *General and Administrative Expenses*

General and administrative expenses include personnel costs, such as salaries, bonuses and stock-based compensation; professional fees related to legal, human resources, accounting and structured finance services; travel; and certain allocated corporate overhead costs related to facilities and information technology. In future periods, we expect that general and administrative expenses will increase in absolute dollars in order to support the growth in our business, to build a corporate infrastructure separate from Vivint, to operate as a public reporting company and to manage an increasing number of investment fund arrangements. Our historical financial results include charges for the use of services provided by Vivint centralized departments and shared facilities. These costs were based on the actual cost incurred by Vivint without mark-up. The charges to us may not be representative of what the costs would have been had we operated separately from the Vivint businesses during the periods presented. However, we believe the amounts charged are representative of the incremental cost to Vivint to provide these services to us. In future periods, we expect to continue to use certain of these services, such as information and technology resources and systems and marketing services, from Vivint as part of the transition services agreement, which provides that we continue to be charged for actual costs incurred.

#### *Amortization of Intangible Assets*

We recorded intangible assets at their fair value of \$43.8 million as of November 17, 2012, the date of our acquisition by 313 Acquisition LLC. Such intangible assets are being amortized over their estimated useful life of three years. In addition, we recorded finite-lived intangible assets of \$3.7 million with useful lives ranging from five to ten years as part of the Solmetric Acquisition in January 2014. As part of the acquisition, we also recorded intangible assets of \$2.1 million related to in-process research and development which are subject to amortization upon completion of the project or impairment if the project is subsequently abandoned. During the third quarter of 2014, we also recorded \$0.3 million of capitalized software development costs related to the development of an internal-use software application that is intended to improve the sales process.

#### *Non-Operating Expenses*

##### *Interest Expense*

Interest expense primarily consists of the interest charges associated with our indebtedness and the interest component of capital lease obligations. In the future, we may incur additional indebtedness to fund our operations and our interest expense would correspondingly increase.

##### *Other Expense*

Other expense primarily consists of interest and penalties primarily associated with employee payroll withholding tax payments which were not paid in a timely manner.

#### *Provision for Income Taxes*

We are subject to taxation in the United States, where all our business is conducted.

Our effective income tax rates differ from the U.S. federal statutory rate primarily due to changes in the valuation allowance on our deferred taxes, state taxes, transactions with non-controlling interests and redeemable non-controlling interests, tax credits, amortization of the prepaid tax asset and nondeductible expenses. Our tax expense (benefit) is composed primarily of state and local taxes paid, intercompany gains, tax credits and net operating losses that are being carried forward to future tax periods.

#### *Net (Loss Attributable) Income Available to Common Stockholders*

We determine the net (loss attributable) income available to common stockholders by deducting from net loss the net loss attributable to non-controlling interests and redeemable non-controlling interests. The net loss attributable to non-controlling interests and redeemable non-controlling interests represents the investment fund investors' allocable share in the results of operations of the investment funds that we consolidate. Generally, gains and losses that are allocated to the fund investors under the HLBV method relate to hypothetical liquidation gains and losses resulting from differences between the net assets of the investment fund and the partners' respective tax capital accounts in the investment fund.

## Results of Operations

The results of operations presented below should be reviewed in conjunction with the condensed consolidated financial statements and related notes included elsewhere in this report.

The following table sets forth selected condensed consolidated statements of operations data for each of the periods indicated.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2014	2013	2014	2013
	(In thousands)			
Revenue:				
Operating leases and incentives	\$ 7,131	\$ 2,123	\$ 15,798	\$ 3,916
Solar energy system and product sales	1,202	151	2,600	283
Total revenue	8,333	2,274	18,398	4,199
Operating expenses:				
Cost of revenue—operating leases and incentives	19,515	4,811	47,161	12,824
Cost of revenue—solar energy system and product sales	627	32	1,510	108
Sales and marketing	5,220	2,105	16,229	4,995
Research and development	431	—	1,403	—
General and administrative	37,170	5,135	63,276	9,967
Amortization of intangible assets	3,727	3,649	11,155	10,946
Total operating expenses	66,690	15,732	140,734	38,840
Loss from operations	(58,357)	(13,458)	(122,336)	(34,641)
Interest expense	3,261	963	7,335	1,954
Other expense	297	541	1,462	1,063
Loss before income taxes	(61,915)	(14,962)	(131,133)	(37,658)
Income tax (benefit) expense	(10,222)	31	(3,286)	76
Net loss	(51,693)	(14,993)	(127,847)	(37,734)
Net loss attributable to non-controlling interests and redeemable non-controlling interests	(16,415)	(37,848)	(105,103)	(40,155)
Net (loss attributable) income available to common stockholders	<u>\$ (35,278)</u>	<u>\$ 22,855</u>	<u>\$ (22,744)</u>	<u>\$ 2,421</u>

### Comparison of Three Months Ended September 30, 2014 and 2013

#### Revenue

	Three Months Ended September 30,		\$ Change 2014 to 2013
	2014	2013	
	(In thousands)		
Total Revenue	\$ 8,333	\$ 2,274	\$ 6,059

The \$6.1 million increase in total revenue was primarily attributable to an increase of \$4.5 million related to operating lease and incentives as the number of installed solar energy systems in service increased significantly for the three months ended September 30, 2014 compared to the same period in 2013. In addition, revenue from the sale of SRECs increased \$0.5 million for the three months ended September 30, 2014 compared to the same period in 2013. Finally, we recognized revenue of \$1.1 million related to the sale of photovoltaic installation software products and devices in the three months ended September 30, 2014. We did not recognize revenue related to the sale of photovoltaic installation software products and devices in the three months ended September 30, 2013 as the Solmetric Acquisition occurred in January 2014.

## Operating Expenses

	Three Months Ended		\$ Change 2014 to 2013
	September 30,		
	2014	2013	
	(In thousands)		
Operating expenses:			
Cost of revenue—operating leases and incentives	\$ 19,515	\$ 4,811	\$ 14,704
Cost of revenue—solar energy system and product sales	627	32	595
Sales and marketing	5,220	2,105	3,115
Research and development	431	—	431
General and administrative	37,170	5,135	32,035
Amortization of intangible assets	3,727	3,649	78
Total operating expenses	<u>\$ 66,690</u>	<u>\$ 15,732</u>	<u>\$ 50,958</u>

*Cost of Revenue* . The \$14.7 million increase in cost of revenue—operating leases and incentives was primarily due to an \$8.4 million increase in costs related to the design, installation and interconnection of solar energy systems to the power grid that were expensed in the period primarily due to growth in headcount and the increase in the number of installed solar energy systems. Depreciation and amortization of solar energy systems also increased \$1.7 million primarily due to the increase in the number of installed solar energy systems and consistent with the significant growth in revenue over these periods. Other factors contributing to the increase in these expenses were the increases of fleet vehicle maintenance, insurance, warehouse and other related costs of \$1.7 million; facility and information technology expenses related to our agreements with Vivint and allocated to cost of revenue—operating leases and incentives of \$1.8 million due to our increased headcount as well as increased square footage utilized by our employees; stock-based compensation expense of \$0.7 million; and travel costs related to design and installation activities of \$0.3 million.

The \$0.6 million increase in cost of revenue—solar energy system and product sales in the three months ended September 30, 2014 was primarily due to the costs of photovoltaic installation software products.

*Sales and Marketing Expense* . The \$3.1 million increase in sales and marketing expense was attributable to our continued efforts to grow our business by entering into new markets, opening new sales offices in various locations and increased hiring of sales and marketing personnel. Specifically, the higher expense level was attributable to increased compensation and benefits expense of \$1.3 million, including \$0.5 million related to stock-based compensation, increased sales and marketing related administrative costs of \$0.7 million, increased travel and housing expenses of \$0.6 million and increased costs related to advertising, promotional and other marketing-related expenses of \$0.5 million.

*Research and Development Expense* . The \$0.4 million increase in research and development expense was attributable to photovoltaic installation software product and device development during the three months ended September 30, 2014. Prior to the Solmetric Acquisition in January 2014, we did not incur any research and development expenses.

*General and Administrative Expense* . The \$32.0 million increase in general and administrative expenses primarily resulted from an increase in stock-based compensation expense of \$18.6 million, of which \$14.8 million related to purchases of our stock by two of our directors in September 2014 (see Note 11 — Redeemable Non-Controlling Interests and Equity for more details on this transaction). Other factors contributing to the increase in general and administrative expense were an increase in professional service fees of \$5.8 million driven primarily from costs related to our initial public offering and preparations to become a public reporting company, an increase in compensation and benefits of \$4.2 million as we added headcount to support our growth, an increase in costs incurred to initiate tax equity investment funds of \$2.2 million and an increase in other administrative costs of \$1.0 million for items including travel, new office equipment not capitalized, professional fees and depreciation.

*Amortization of Intangible Assets* . The increase in amortization of intangible assets is a result of the intangible assets acquired as part of the Solmetric Acquisition.

## Non-Operating Expenses

	Three Months Ended September 30,		\$ Change 2014 to 2013
	2014	2013	
	(In thousands)		
Interest expense	\$ 3,261	\$ 963	\$ 2,298
Other expense	297	541	(244)

*Interest Expense*. The \$2.3 million increase in interest expense was primarily the result of additional borrowings. Of the \$2.3 million increase, \$1.9 million related to our credit facility and aggregation credit facility entered into in 2014 and \$0.4 million related to our revolving lines of credit with Vivint. Of the \$1.9 million in interest expense related to our credit facilities with Bank of America, \$0.9 million related to the amortization of loan origination fees.

*Other Expense*. The \$0.2 million decrease in other expenses during the three months ended September 30, 2014 compared to the prior period was comprised primarily of a decrease in incurred interest and penalties associated with payroll taxes from 2012 and 2013 that had previously not been paid in a timely manner. The decrease was primarily due to payments in 2014 of past-due payroll taxes.

### Net Loss Attributable to Non-controlling Interests and Redeemable Non-controlling Interests

	Three Months Ended September 30,		\$ Change 2014 to 2013
	2014	2013	
	(In thousands)		
Net loss attributable to non-controlling interests and redeemable non-controlling interests	\$ (16,415)	\$ (37,848)	\$ 21,433

The allocation of net loss to non-controlling interests and redeemable non-controlling interests as a percentage of our total net loss was 32% and 252% for the three months ended September 30, 2014 and 2013. Generally, gains and losses that are allocated to the fund investors under the HLBV method relate to hypothetical liquidation gains and losses resulting from differences between the net assets of the investment fund and the partners' respective tax capital accounts in the investment fund. Specifically, the decrease in net loss attributable to non-controlling interests and redeemable non-controlling interests was primarily due to the timing of our sale and subsequent installation of solar energy systems into certain investment funds. Losses to the fund investors were also driven by a reduction in certain fund investors' claims on net assets due to the election of the partnership to take bonus depreciation allowances under Internal Revenue Code Section 179, as well as the receipt of ITCs that were primarily allocated to fund investors.

### Comparison of Nine Months Ended September 30, 2014 and 2013

#### Revenue

	Nine Months Ended September 30,		\$ Change 2014 to 2013
	2014	2013	
	(In thousands)		
Total Revenue	\$ 18,398	\$ 4,199	\$ 14,199

The \$14.2 million increase in total revenue was primarily attributable to an increase of \$10.6 million related to operating lease and incentives as the number of installed solar energy systems in service increased significantly for the nine months ended September 30, 2014 compared to the same period in 2013. In addition, revenue from the sale of SRECs increased \$1.2 million for the nine months ended September 30, 2014 compared to the same period in 2013. Finally, subsequent to the Solmetric Acquisition in January 2014, we recognized revenue of \$2.4 million related to the sale of photovoltaic installation software products and devices in the nine months ended September 30, 2014. We did not recognize revenue related to the sale of photovoltaic installation software products and devices in the nine months ended September 30, 2013 as the Solmetric Acquisition occurred in January 2014.

## Operating Expenses

	Nine Months Ended		\$ Change 2014 to 2013
	September 30,		
	2014	2013	
	(In thousands)		
<b>Operating expenses:</b>			
Cost of revenue—operating leases and incentives	\$ 47,161	\$ 12,824	\$ 34,337
Cost of revenue—solar energy system and product sales	1,510	108	1,402
Sales and marketing	16,229	4,995	11,234
Research and development	1,403	—	1,403
General and administrative	63,276	9,967	53,309
Amortization of intangible assets	11,155	10,946	209
Total operating expenses	<u>\$ 140,734</u>	<u>\$ 38,840</u>	<u>\$ 101,894</u>

*Cost of Revenue* . The \$34.3 million increase in cost of revenue—operating leases and incentives was primarily due to a \$20.9 million increase in costs that were expensed in the period and related to the design, installation and interconnection of solar energy systems to the power grid primarily due to growth in headcount and the increase in the number of installed solar energy systems. Depreciation and amortization of solar energy systems also increased \$4.1 million primarily due to the increase in the number of installed solar energy systems and consistent with the significant growth in revenue over these periods. The facility and information technology expenses related to our agreements with Vivint and allocated to cost of revenue—operating leases and incentives increased by \$4.3 million due to our increased headcount as well as increased square footage utilized by our employees. Other factors contributing to the increase in these expenses were the increases in fleet vehicle maintenance, insurance, warehouse and other related costs of \$3.0 million; travel costs related to design and installation activities of \$1.1 million; and stock-based compensation of \$0.7 million.

The \$1.4 million increase in cost of revenue—solar energy system and product sales in the nine months ended September 30, 2014 was primarily due to the costs of photovoltaic installation software products.

*Sales and Marketing Expense* . The \$11.2 million increase in sales and marketing expense was attributable to our continued efforts to grow our business by entering into new markets, opening new sales offices in various locations and increased hiring of sales and marketing personnel. Specifically, the higher expense level was attributable to increased compensation and benefits expense of \$5.9 million, including \$0.6 million related to stock-based compensation, increased costs related to advertising, promotional and other marketing-related expenses of \$2.1 million, increased travel and housing expenses of \$1.8 million, increased sales and marketing related administrative costs of \$1.1 million and increased facility and information technology expenses allocated to sales and marketing related to our agreement with Vivint of \$0.2 million.

*Research and Development Expense* . The \$1.4 million increase in research and development expense was attributable to photovoltaic installation software product and device development during the nine months ended September 30, 2014. Prior to the Solmetric Acquisition in January 2014, we did not incur any research and development expenses.

*General and Administrative Expense* . The \$53.3 million increase in general and administrative expenses primarily resulted from an increase in stock-based compensation expense of \$19.3 million, of which \$14.8 million related to purchases of our stock by two of our directors in September 2014 (see Note 11 — Redeemable Non-Controlling Interests and Equity for more details on this transaction). Our professional service fees increased by \$15.9 million driven primarily from costs related to our initial public offering, preparations to become a public reporting company. Our compensation and benefits increased by \$9.8 million as we added headcount to support our growth and costs incurred to initiate tax equity investment funds increased by \$6.0 million. Other factors contributing to the increase in these costs were an increase in banking service charges of \$0.4 million, an increase in the facility and information technology expenses related to our agreements with Vivint and allocated to general and administrative expense of \$0.5 million, new office equipment costs not capitalized of \$0.3 million and an increase in other administrative costs of \$0.8 million for items including travel, depreciation and professional fees.

*Amortization of Intangible Assets* . The increase in amortization of intangible assets is a result of the intangible assets acquired as part of the Solmetric Acquisition.

## Non-Operating Expenses

	Nine Months Ended		\$ Change 2014 to 2013
	September 30,		
	2014	2013	
(In thousands)			
Interest expense	\$ 7,335	\$ 1,954	\$ 5,381
Other expense	1,462	1,063	399

*Interest Expense*. The \$5.4 million increase in interest expense was primarily the result of additional borrowings. Of the \$5.4 million increase, \$3.1 million related to our credit facility and aggregation credit facility entered into in 2014 and \$2.5 million related to our revolving lines of credit with Vivint. Of the \$3.1 million in interest expense related to our credit facilities with Bank of America, \$1.5 million related to the amortization of loan origination fees. These increases in interest expense were partially offset by a decrease of \$0.2 million in interest expense related to the revolving line of credit that was terminated in June 2013.

*Other Expense*. The \$0.4 million increase in other expenses during the nine months ended September 30, 2014 as compared to the prior period was comprised primarily of interest and penalties associated with payroll taxes from 2012 and 2013 that were not paid in a timely manner.

## Net Loss Attributable to Non-controlling Interests and Redeemable Non-controlling Interests

	Nine Months Ended		\$ Change 2014 to 2013
	September 30,		
	2014	2013	
(In thousands)			
Net loss attributable to non-controlling interests and redeemable non-controlling interests	\$ (105,103)	\$ (40,155)	\$ (64,948)

The allocation of net loss to non-controlling interests and redeemable non-controlling interests as a percentage of our total net loss was 82% and 106% for the nine months ended September 30, 2014 and 2013. Generally, gains and losses that are allocated to the fund investors under the HLBV method relate to hypothetical liquidation gains and losses resulting from differences between the net assets of the investment fund and the partners' respective tax capital accounts in the investment fund. Specifically, the increase in net loss attributable to non-controlling interests and redeemable non-controlling interests was mainly due to the timing of our sale and subsequent installation of solar energy systems into certain investment funds. Losses to the fund investors were also driven by a reduction in certain fund investors' claims on net assets due to the election of the partnership to take bonus depreciation allowances under Internal Revenue Code Section 179, as well as the receipt of ITCs that were primarily allocated to fund investors.

## Liquidity and Capital Resources

As of September 30, 2014, we had cash and cash equivalents of \$66.1 million, which consisted principally of cash and time deposits with high-credit-quality financial institutions. On October 6, 2014, we closed our initial public offering in which we sold 20,600,000 shares of our common stock at a price of \$16.00 per share, resulting in net proceeds of \$300.8 million after deducting underwriting discounts and commissions and \$8.6 million in offering expenses payable by us. We maintain the proceeds received in cash and cash equivalents. Since inception, we have financed our operations primarily from investment fund arrangements that we have formed with fund investors and, to a lesser extent, from borrowings. Our principal uses of cash are funding our operations, including the costs of acquisition and installation of solar energy systems, satisfaction of our obligations under our debt instruments and other working capital requirements. We believe our cash and cash equivalents, including our initial public offering proceeds, investment fund commitments, projected investment fund contributions and available borrowings as further described below will be sufficient to meet our anticipated cash needs for at least the next 12 months.

## **Sources of Funds**

### *Sale of Equity Securities*

On October 6, 2014, we closed our initial public offering in which we sold 20,600,000 shares of our common stock at a price of \$16.00 per share, resulting in net proceeds of \$300.8 million after deducting underwriting discounts and commissions and \$8.6 million in offering expenses payable by us. We maintain the proceeds received in cash and cash equivalents.

In August and September 2014, we issued and sold an aggregate of 9,703,122 shares of common stock to 313 Acquisition LLC and two of our directors for \$10.667 per share for aggregate gross proceeds of \$103.5 million. For additional discussion regarding these transactions, refer to Note 11—Redeemable Non-Controlling Interest and Equity.

### *Investment Fund Commitments*

As of September 30, 2014, we have raised ten investment funds to which investors such as banks and other large financial investors have committed to invest approximately \$543 million, which will enable us to install solar energy systems of total fair market value approximating \$1.3 billion. The undrawn committed capital for these funds is approximately \$162 million, which includes approximately \$42 million in payments that will be received from fund investors upon interconnection to the respective utility grid of solar energy systems that have already been allocated to investment funds. As of September 30, 2014, we had tax equity commitments to fund approximately 74 megawatts of future deployments, which we estimate to be sufficient to fund solar energy systems with a total fair market value of approximately \$370 million.

### *Debt Instruments*

**Aggregation Credit Facility.** In September 2014, we entered into an aggregation credit facility pursuant to which we may borrow up to an aggregate of \$350.0 million and, subject to certain conditions, up to an additional aggregate of \$200.0 million in borrowings with certain financial institutions for which Bank of America, N.A. is acting as administrative agent. As of September 30, 2014, we incurred an aggregate of \$87.0 million in term loan borrowings under this agreement, of which approximately \$75.7 million was used to repay the outstanding principal and accrued and unpaid interest under the May 2014 credit facility with Bank of America, N.A., and had a remaining borrowing capacity of \$263.0 million.

Prepayments are permitted under the aggregation credit facility, and the principal and accrued interest on any outstanding loans mature on March 12, 2018. Under the aggregation credit facility, interest on borrowings accrues at a floating rate equal to (1) a margin that varies between 3.25% during the period during which we may incur borrowings and 3.50% after such period plus either of (2)(a) LIBOR or (b) the greatest of (i) the Federal Funds Rate plus 0.5%, (ii) the administrative agent's prime rate and (iii) LIBOR plus 1%. As of September 30, 2014, the borrowings under the aggregation credit facility accrued interest at 3.5%.

The borrower under the aggregation credit facility is Vivint Solar Financing I, LLC, one of our indirect wholly owned subsidiaries, that in turn holds our interests in the managing members in our existing investment funds. These managing members guarantee the borrower's obligations under the aggregation credit facility. In addition, Vivint Solar Holdings, Inc. has pledged its interests in the borrower, and the borrower has pledged its interests in the guarantors as security for the borrower's obligations under the aggregation credit facility. The aggregation credit facility includes customary events of default, conditions to borrowing and covenants, including covenants that restrict, subject to certain exceptions, the borrower's and the guarantors' ability to incur indebtedness, incur liens, make investments, make fundamental changes to their business, dispose of assets, make certain types of restricted payments or enter into certain related party transactions, as well as maintain certain financial ratios. As of September 30, 2014, we were in compliance with such covenants.

**Related Party Revolving Lines of Credit.** In May 2013, we entered into a Subordinated Note and Loan Agreement with Vivint, pursuant to which we may incur up to \$20.0 million in revolver borrowings. In January 2014, we amended and restated the agreement, pursuant to which we may incur up to an additional \$30.0 million in revolver borrowings. As of September 30, 2014, we had \$36.0 million outstanding under this agreement, inclusive of paid-in-kind and accrued interest. On October 9, 2014, we paid in full the then outstanding borrowings and accrued interest and terminated the agreement.

In December 2012, we entered into a Subordinated Note and Loan Agreement with Vivint, pursuant to which we may incur up to \$20.0 million in revolver borrowings. As of September 30, 2014, we had \$22.7 million outstanding under this agreement, inclusive of paid-in-kind and accrued interest. On October 9, 2014, we paid in full the outstanding borrowings and accrued interest and terminated the agreement.

### Uses of Funds

Our principal uses of cash are funding our operations, including the costs of acquisition and installation of solar energy systems and other working capital requirements. Over the past two years, our operating expenses have increased from year to year due to the significant growth of our business. Currently, our capital expenditures excluding our solar energy systems are minimal; however, we anticipate that our capital expenditures will increase as we continue to grow our business.

We expect our operating cash requirements to increase in the future as we increase sales and marketing activities to expand into new markets and increase sales coverage in markets in which we currently operate. In addition, the agreements governing each of our investment funds include options that, when exercised, either require us to purchase, or allow us to elect to purchase, our fund investor's interest in the investment fund. No options have been exercised or become exercisable to date, however, such options are expected to become exercisable in the future and the exercise of one or more options could require us to expend significant funds. Regardless of whether these options are exercised, we will need to raise financing to support our operations, and such financing may not be available to us on acceptable terms, or at all. If we are unable to raise financing when needed, our operations and ability to execute our business strategy could be adversely affected. We may seek to raise financing through the sale of equity, equity-linked securities or the incurrence of indebtedness. Additional equity or equity-linked financing may be dilutive to our stockholders. If we raise funding through the incurrence of indebtedness, such indebtedness would have rights that are senior to holders of our equity securities and could contain covenants that restrict our operations.

### Historical Cash Flows

The following table summarizes our cash flows for the periods indicated:

	Nine Months Ended	
	September 30,	
	2014	2013
<b>Consolidated cash flow data:</b>	(In thousands)	
Net cash used in operating activities	\$ (104,871)	\$ (10,548)
Net cash used in investing activities	(266,303)	(91,218)
Net cash provided by financing activities	431,285	105,081
Net increase in cash and cash equivalents	\$ 60,111	\$ 3,315

### Operating Activities

For the nine months ended September 30, 2014, we had a net cash outflow from operations of \$104.9 million. The cash outflow primarily resulted from our net loss of \$127.8 million and increases in our prepaid tax asset of \$45.8 million, other non-current assets of \$11.4 million, prepaid and other current assets of \$11.6 million and accounts receivable of \$1.9 million as well as decreases in accounts payable to related parties of \$3.1 million and accrued compensation of \$2.8 million. The cash outflow was partially offset by non-cash items such as \$45.6 million of deferred income taxes, \$20.8 million of stock-based compensation, \$16.7 million of depreciation and amortization, \$4.3 million of non-cash interest expense, \$1.5 million of amortized deferred financing costs and increases in accrued and other current liabilities of \$7.8 million, deferred revenue of \$1.3 million and accounts payable of \$1.2 million.

For the nine months ended September 30, 2013, we had a net cash outflow from operations of \$10.5 million. This cash outflow primarily resulted from our net loss of \$37.7 million and increases in our prepaid tax asset of \$18.1 million, prepaid expenses and other current assets of \$2.2 million and accounts receivable and other non-current assets of \$0.9 million. The cash outflow was partially offset by non-cash items such as \$17.5 million of deferred income taxes, \$12.0 million of depreciation and amortization, \$1.8 million of non-cash interest expense, \$0.3 million of stock-based compensation and increases in accrued compensation of \$6.5 million, accounts payable of \$4.7 million, accrued and other current liabilities of \$3.5 million, accounts payable to related parties of \$1.6 million and deferred revenue of \$0.4 million.

### Investing Activities

For the nine months ended September 30, 2014, we used \$266.3 million in investing activities of which \$249.6 million was associated with the design, acquisition and installation of solar energy systems; \$12.0 million related to the Solmetric Acquisition; \$3.1 million related to the purchase of property; \$1.5 million related to the change in restricted cash associated with our aggregation credit facility entered into in May 2014 and \$0.3 million related to the purchase of intangible assets; partially offset by receipt of \$0.2 million of U.S. Treasury grants associated with the solar energy systems.

For the nine months ended September 30, 2013, we used \$91.2 million in investing activities of which \$96.7 million was related to the design, acquisition and installation of solar energy systems and \$3.5 million was related to the change in restricted cash associated with the guaranty agreements with fund investors. These uses were partially offset by receipt of \$9.0 million of U.S. Treasury grants associated with the solar energy systems.

#### **Financing Activities**

For the nine months ended September 30, 2014, we generated \$431.3 million from financing activities primarily comprised of \$240.9 million in proceeds from investments by various fund investors and \$103.5 million from the issuance of shares of common stock to 313 Acquisition LLC and two directors. We also paid distributions to fund investors of \$5.5 million. In addition, we received \$154.5 million and repaid \$141.5 million under our revolving lines of credit with related parties. We received \$87.0 million under our aggregation credit facility entered into in September 2014 and received and repaid \$75.5 million under our short-term credit facility. We also paid \$5.8 million of deferred offering costs and repaid \$1.8 million on our capital lease obligations.

For the nine months ended September 30, 2013, we generated \$105.1 million from financing activities primarily resulting from \$84.4 million and \$63.5 million in proceeds from investments by various fund investors and revolving lines of credit from a related party, and paid distributions to fund investors of \$1.5 million. In addition, we repaid \$40.0 million on our revolving line of credit with a third party, \$2.0 million on a revolving line of credit with a third party and \$0.7 million on our capital lease obligations, and we received capital contributions from 313 Acquisition LLC of \$1.4 million.

#### **Contractual Obligations**

There were no material changes in our commitments under contractual obligations, as disclosed in our Prospectus.

#### **Off-Balance Sheet Arrangements**

We include in our condensed consolidated financial statements all assets and liabilities and results of operations of investment fund arrangements that we have entered into. We do not have any off-balance sheet arrangements.

#### **Recent Accounting Pronouncements**

On May 28, 2014, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, No. 2014-09, *Revenue from Contracts with Customers*, which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. The new standard is effective for us on January 1, 2017. Early application is not permitted. The standard permits the use of either the retrospective or cumulative effect transition method. We are evaluating the effect that ASU 2014-09 will have on our condensed consolidated financial statements and related disclosures. We have not yet selected a transition method nor have we determined the effect of the standard on our ongoing financial reporting.

#### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

Our exposure to market risk for changes in interest rates relates primarily to our cash and cash equivalents and our indebtedness.

As of September 30, 2014, we had cash and cash equivalents of \$66.1 million. Our cash equivalents are money market accounts and time deposits with maturities of three months or less at the time of purchase. Our primary exposure to market risk on these funds is interest income sensitivity, which is affected by changes in the general level of the interest rates in the United States. However, because of the short-term nature of the instruments in our portfolio, a sudden change in market interest rates would not be expected to have a material impact on our condensed consolidated financial statements.

In September 2014, we entered into an aggregation credit facility pursuant to which we may borrow up to an aggregate of \$350.0 million and, subject to certain conditions, up to an additional aggregate of \$200.0 million in borrowings with certain financial institutions for which Bank of America, N.A. is acting as administrative agent. As of September 30, 2014, we incurred an aggregate of \$87.0 million in term loan borrowings under this agreement, which currently accrues interest at a rate of approximately 3.5%. If the aggregation facility had been fully drawn at December 31, 2013 and remained outstanding for all of 2014, the effect of a hypothetical 10% change in our floating interest rate on these borrowings would increase or decrease interest expense by approximately \$1.2 million.

All of our operations are in the United States and all purchases of our solar energy system components are denominated in U.S. dollars. However, our suppliers often incur a significant amount of their costs by purchasing raw materials and generating operating expenses in foreign currencies. If the value of the U.S. dollar depreciates significantly or for a prolonged period of time against these currencies (particularly the Chinese Renminbi), our suppliers may raise the prices they charge us, which could harm our financial results.

## **Item 4. Controls and Procedures**

### **Internal Control Over Financial Reporting**

#### ***(a) Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2014 pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Based on the evaluation of our disclosure controls and procedures as of September 30, 2014, our chief executive officer and chief financial officer concluded that, as a result of material weaknesses in our internal control over financial reporting as previously disclosed in our Prospectus, our disclosure controls and procedures were not effective as of September 30, 2014.

#### ***Previously Reported Material Weakness***

In connection with the preparation, audits and interim reviews of our consolidated financial statements, we and our independent registered public accounting firm identified a material weakness in internal control over financial reporting. Under standards established by the Public Company Accounting Oversight Board of the United States, a material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Specifically, we and our independent registered public accounting firm identified a number of material errors and other audit adjustments in connection with the preparation, audits and interim reviews of our consolidated financial statements which resulted in the restatement of our consolidated financial statements as of and for the year ended December 31, 2013 and as of and for the three months ended March 31, 2014.

As of December 31, 2013 and through September 30, 2014, we had not designed and implemented sufficient controls and processes and did not have a sufficient number of qualified accounting, finance and tax personnel. Additionally, the nature of our investment funds increases the complexity of our accounting for the allocation of net income (loss) between our stockholders and non-controlling interests under the HLBV method and the calculation of our tax provision. As we enter into additional investment funds, which may have contractual provisions different from those of our existing funds, the calculation under the HLBV method and the calculation of our tax provision could become increasingly complicated. This additional complexity could increase the chance that we experience additional errors in the future, particularly because we have a material weakness in internal controls. In addition, our need to devote our resources to addressing this complexity could delay or prolong our remediation efforts and thereby prolong the existence of the material weakness. As a result, we and our independent registered public accounting firm determined that we do not have adequate procedures and controls and an adequate number of personnel to ensure that accurate financial statements could be prepared on a timely basis.

We have begun taking numerous steps and plan to take additional steps to remediate the underlying causes of the material weakness. In November 2013, we hired a new chief financial officer and a new vice president of finance and in January 2014, we hired a new corporate controller as well as additional finance and accounting personnel since January 2014, which significantly increases our finance and accounting team's experience in GAAP and financial reporting for publicly traded companies. We are also in the process of formalizing and implementing written policies and procedures for the review of account analyses, reconciliations and journal entries. In January 2014, we engaged third-party consultants to provide support over our accounting and financial reporting process including assisting us with our evaluation of complex technical accounting matters. In addition, we expect to retain consultants to advise us on making further improvements to our internal controls over financial reporting. We believe that these additional resources will enable us to broaden the scope and quality of our controls relating to the oversight and review of financial statements and our application of relevant accounting policies. Furthermore, we plan to implement and improve systems to automate certain financial reporting processes and to improve information accuracy. However, these remediation efforts are still in process and have not yet been completed. Because of this material weakness, there is heightened risk that a material misstatement of our annual or quarterly financial statements will not be prevented or detected. We plan to complete this remediation process as quickly as possible. Although we expect it will take at least a year, we cannot estimate how long it will take to remediate this material weakness. In addition, the remediation steps we have taken, are taking and expect to take may not effectively remediate the material weakness, in which case our internal control over financial reporting would continue to be ineffective. We cannot guarantee that we will be able to

complete our remedial actions successfully. Even if we are able to complete these actions successfully, these measures may not adequately address our material weakness and may take more than a year to complete. In addition, it is possible that we will discover additional material weaknesses in our internal control over financial reporting or that our existing material weakness will result in additional errors in or restatements of our financial statements.

We expect to be required to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting commencing with the filing of our second annual report on Form 10-K. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. In addition, we will be required to engage an independent registered public accounting firm to opine on the effectiveness of our internal control over financial reporting beginning at the date we are no longer an “emerging growth company” as defined in the JOBS Act. At such time, our management may conclude that our internal control over financial reporting is not effective. Moreover, even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm may issue a report that is adverse if such firm is not satisfied with the level at which our controls are documented, designed, operated or reviewed. As a result, we may need to undertake various actions, such as implementing new internal controls and procedures and hiring accounting or internal audit staff. Our remediation efforts may not enable us to avoid a material weakness in the future. In addition, as a public company, our reporting obligations may place a significant strain on our management, operational and financial resources and systems for the foreseeable future.

***(b) Changes in Internal Control over Financial Reporting***

There were no changes in our internal control over financial reporting during the nine months ended September 30, 2014 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting, other than those described above.

***Inherent Limitation on the Effectiveness of Internal Control***

The effectiveness of any system of internal control over financial reporting, including ours, is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, any system of internal control over financial reporting, including ours, no matter how well designed and operated, can only provide reasonable, not absolute assurances. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business, but cannot assure you that such improvements will be sufficient to provide us with effective internal control over financial reporting.

## PART II – OTHER INFORMATION

### Item 1. Legal Proceedings

In the normal course of business, we may from time to time be named as a party to various legal claims, actions and complaints. It is impossible to predict with certainty whether any resulting liability would have a material adverse effect on our financial position, results of operations or cash flows.

In December 2013, one of our former sales representatives, on behalf of himself and a purported class, filed a complaint for unspecified damages, injunctive relief and restitution in the Superior Court of the State of California in and for the County of San Diego against Vivint Solar Developer, LLC, one of our subsidiaries, and unnamed John Doe defendants. This action alleges certain violations of the California Labor Code and the California Business and Professions Code based on, among other things, alleged improper classification of sales representatives and sales managers, failure to pay overtime compensation, failure to provide meal periods, failure to provide accurate itemized wage statements, failure to pay wages on termination and failure to reimburse expenses. The complaint also seeks penalties of an unspecified amount associated with the alleged violations, interest on all economic damages and reasonable attorney's fees and costs. In addition, the complaint requests an injunction, which would enjoin us from similar violations of California's Labor Code and Business and Professions Code, and restitution of costs to the plaintiff and purported class members under California's unfair competition law. In January 2014, we filed an answer denying the allegations in the complaint and asserting various affirmative defenses. The parties are currently engaged in limited discovery and have agreed to participate in mediation. We have recorded a \$0.4 million reserve related to this proceeding in our condensed consolidated financial statements.

In September 2014, two of our former installation technicians, on behalf of themselves and a purported class, filed a complaint for damages, injunctive relief and restitution in the Superior Court of the State of California in and for the County of San Diego against us and unnamed John Doe defendants. The complaint alleges certain violations of the California Labor Code and the California Business and Professions Code based on, among other things, alleged improper classification of installer technicians, installer helpers, electrician technicians and electrician helpers, failure to pay minimum and overtime wages, failure to provide accurate itemized wage statements, and failure to provide wages on termination. We believe that we have strong defenses to the claims asserted in this matter. Although we cannot predict with certainty the ultimate resolution of this suit, we do not believe it will have a material adverse effect on our business, results of operations, cash flows or financial condition.

In May 2014, Vivint made us aware that the U.S. Attorney's office for the State of Utah is engaged in an investigation that Vivint believes relates to certain political contributions made by some of Vivint's executive officers that are our directors and some of Vivint's employees. We have no reason to believe that we, the executive officers or employees are targets of such investigation.

### Item 1A. Risk Factors

*You should carefully consider the following risk factors, together with all of the other information included in this report, including the section of this report captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes, before you decide to purchase shares of our common stock. If any of the following risks occurred, it could materially adversely affect our business, financial condition or operating results. This report also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described below and elsewhere in this report.*

#### Risks Related to our Business

***We need to enter into substantial additional financing arrangements to facilitate our customers' access to our solar energy systems, and if financing is not available to us on acceptable terms when needed, our ability to continue to grow our business would be materially adversely impacted.***

Our future success depends on our ability to raise capital from third-party investors on competitive terms to help finance the deployment of our solar energy systems. We seek to minimize our cost of capital in order to maintain the price competitiveness of the electricity produced by, or the lease payments for, our solar energy systems. If we are unable to establish new investment funds when needed, or upon desirable terms, to enable our customers' access to our solar energy systems with little to no upfront cost to them, we may be unable to finance installation of our customers' systems or our cost of capital could increase, either of which would have a material adverse effect on our business, financial condition, results of operations and prospects. As of September 30, 2014, we had raised ten investment funds to which investors such as banks and other large financial investors have committed to invest approximately \$543 million which will enable us to install solar energy systems of total fair market value approximating \$1.3 billion. As of September 30, 2014, we had tax equity commitments to fund approximately 74 megawatts of future deployments, which we estimate to be sufficient to fund solar energy systems with a total fair market value of approximately \$370 million. The contract terms in certain of our investment fund documents impose conditions on our ability to draw on financing commitments from the fund

investors, including if an event occurs that could reasonably be expected to have a material adverse effect on the fund or on us. If we do not satisfy such conditions due to events related to our business or a specific investment fund or developments in our industry or otherwise, and as a result we are unable to draw on existing commitments, our inability to draw on such commitments could have a material adverse effect on our business, liquidity, financial condition and prospects.

To meet the capital needs of our growing business, we will need to obtain additional financing from new investors and investors with whom we currently have arrangements. If any of the financial institutions that currently provide financing decide not to invest in the future due to general market conditions, concerns about our business or prospects or any other reason, or decide to invest at levels that are inadequate to support our anticipated needs or materially change the terms under which they are willing to provide future financing, we will need to identify new financial institutions and companies to provide financing and negotiate new financing terms.

In the past, we have at times been unable to establish investment funds in accordance with our plans, due in part to the relatively limited number of investors attracted to such types of funds, competition for such capital and the complexity associated with negotiating the agreements with respect to such funds. Delays in raising financing could cause us to delay entering into new markets and hiring additional personnel in support of our planned growth. Any future delays in capital raising could similarly cause us to delay deployment of a substantial number of solar energy systems for which we have signed power purchase agreements with customers. Our future ability to obtain additional financing depends on banks' and other financing sources' continued confidence in our business model and the renewable energy industry as a whole. It could also be impacted by the liquidity needs of such financing sources themselves. We face intense competition from a variety of other companies, technologies and financing structures for such limited investment capital. If we are unable to continue to offer a competitive investment profile, we may lose access to these funds or they may only be available to us on terms that are less favorable than those received by our competitors. For example, if we experience higher customer default rates than we currently experience in our existing investment funds, this could make it more difficult or costly to attract future financing. In our experience, there are a relatively small number of investors that generate sufficient profits and possess the requisite financial sophistication that can benefit from and have significant demand for the tax benefits that our investment funds can provide. Historically, in the distributed solar energy industry, investors have typically been large financial institutions and a few large, profitable corporations. Our ability to raise investment funds is limited by the relatively small number of such investors. Any inability to secure financing could lead us to cancel planned installations, could impair our ability to accept new customers and could increase our borrowing costs, any of which would have a material adverse effect on our business, financial condition, results of operations and prospects.

***A material reduction in the retail price of traditional utility generated electricity or electricity from other sources would harm our business, financial condition, results of operations and prospects.***

We believe that a significant number of our customers decide to buy solar energy because they want to pay less for electricity than what is offered by the traditional utilities. However, distributed residential solar energy has yet to achieve broad market adoption as evidenced by the fact that distributed solar has penetrated less than 1% of its total addressable market in the U.S. residential sector.

The customer's decision to choose solar energy may also be affected by the cost of other renewable energy sources. Decreases in the retail prices of electricity from the traditional utilities or from other renewable energy sources would harm our ability to offer competitive pricing and could harm our business. The price of electricity from traditional utilities could decrease as a result of:

- construction of a significant number of new power generation plants, including plants utilizing natural gas, nuclear, coal, renewable energy or other generation technologies;
- relief of transmission constraints that enable local centers to generate energy less expensively;
- reductions in the price of natural gas;
- utility rate adjustment and customer class cost reallocation;
- energy conservation technologies and public initiatives to reduce electricity consumption;
- development of new or lower-cost energy storage technologies that have the ability to reduce a customer's average cost of electricity by shifting load to off-peak times; and
- development of new energy generation technologies that provide less expensive energy.

A reduction in utility electricity prices would make the purchase of electricity under our power purchase agreements or the lease of our solar energy systems less economically attractive. If the retail price of energy available from traditional utilities were to decrease due to any of these reasons, or other reasons, we would be at a competitive disadvantage, we may be unable to attract new customers and our growth would be limited.

***Electric utility industry policies and regulations may present technical, regulatory and economic barriers to the purchase and use of solar energy systems that may significantly reduce demand for electricity from our solar energy systems.***

Federal, state and local government regulations and policies concerning the electric utility industry, utility rate structures, interconnection procedures, and internal policies of electric utilities, heavily influence the market for electricity generation products and services. These regulations and policies often relate to electricity pricing and the interconnection of distributed electricity generation systems to the power grid. Policies and regulations that promote renewable energy have been challenged by traditional utilities and questioned by those in government and others arguing for less governmental spending and involvement in the energy market. To the extent that such views are reflected in government policy, the changes in such policies and regulations could adversely affect our results of operations, cost of capital and growth prospects.

In the United States, governments and the state public service commissions that determine utility rates continuously modify these regulations and policies. These regulations and policies could result in a significant reduction in the potential demand for electricity from our solar energy systems and could deter customers from entering into contracts with us. In addition, depending on the region, electricity generated by solar energy systems competes most effectively with the most expensive retail rates for electricity from the power grid, rather than the less expensive average price of electricity. Modifications to the utilities' peak hour pricing policies or rate design, such as to a flat rate, would make our current products less competitive with the price of electricity from the power grid. For example, a shift in the timing of peak rates for utility-generated electricity to a time of day when solar energy generation is less efficient could make our solar energy system offerings less competitive and reduce demand for our offerings.

In addition, any changes to government or internal utility regulations and policies that favor electric utilities could reduce our competitiveness and cause a significant reduction in demand for our offerings or increase our costs or the prices we charge our customers. Certain jurisdictions have proposed allowing traditional utilities to assess fees on customers purchasing energy from solar energy systems or imposing a new charge that would disproportionately impact solar energy system customers who utilize net metering, either of which would increase the cost of energy to those customers and could reduce demand for our solar energy systems. For example, California has adopted and implemented Assembly Bill 327, which has directly revised the caps on net metering applicable to each utility in the state, and further mandates that the California Public Utilities Commission, or CPUC, study net metering and craft an updated program that may result in future charges being imposed on our customers in California. It is possible these charges could be imposed on not just future customers but our existing customers, causing a potentially significant consumer relations problem and harming our reputation and business. Due to the concentration of our business in California and Hawaii, which account for approximately 51% and 12% of our cumulative installations as of September 30, 2014, any such changes in these markets would be particularly harmful to our business, results of operations and future growth.

***Our business currently depends on the availability of rebates, tax credits and other financial incentives. The expiration, elimination or reduction of these rebates, credits or incentives could adversely impact our business.***

Federal, state and local government bodies provide incentives to owners, end users, distributors, system integrators and manufacturers of solar energy systems to promote solar electricity in the form of rebates, tax credits and other financial incentives such as system performance payments, payments for renewable energy credits associated with renewable energy generation and exclusion of solar energy systems from property tax assessments. We rely on these governmental rebates, tax credits and other financial incentives to finance solar energy system installations. These incentives enable us to lower the price we charge customers for energy from, and to lease, our solar energy systems, helping to catalyze customer acceptance of solar energy with those customers as an alternative to utility provided power. However, these incentives may expire on a particular date, end when the allocated funding is exhausted or be reduced or terminated as solar energy adoption rates increase. These reductions or terminations often occur without warning. In addition, the financial value of certain incentives decreases over time. For example, the value of SRECs in a market tends to decrease over time as the supply of SREC producing solar energy systems installed in that market increases. If we overestimate the future value of these incentives, it could adversely impact our financial results.

The federal government currently offers a 30% investment tax credit, or the ITC, under Section 48(a) of the Internal Revenue Code for the installation of certain solar power facilities until December 31, 2016. By statute, the ITC is scheduled to decrease to 10% of the fair market value of a solar energy system on January 1, 2017, and the amounts that fund investors are willing to invest could decrease or we may be required to provide a larger allocation of customer payments to the fund investors as a result of this scheduled decrease. To the extent we have a reduced ability to raise investment funds as a result of this reduction, the rate of growth of installations of our residential solar energy systems would be negatively impacted. The ITC has been a significant driver of the financing supporting the adoption of residential solar energy systems in the United States and its scheduled reduction beginning in 2017, unless modified by an intervening change in law, will significantly impact the attractiveness of solar to these investors and potentially our business.

Applicable authorities may adjust or decrease incentives from time to time or include provisions for minimum domestic content requirements or other requirements to qualify for these incentives. Reductions in, eliminations or expirations of or additional

application requirements for, governmental incentives could adversely impact our results of operations and ability to compete in our industry by increasing our cost of capital, causing us to increase the prices of our energy and solar energy systems and reducing the size of our addressable market. In addition, this would adversely impact our ability to attract investment partners and to form new investment funds and our ability to offer attractive financing to prospective customers.

***We rely on net metering and related policies to offer competitive pricing to our customers in all of our current markets, and changes to net metering policies may significantly reduce demand for electricity from our solar energy systems.***

Our business benefits significantly from favorable net metering policies in states in which we operate. Net metering allows a homeowner to pay his or her local electric utility only for their power usage net of production from the solar energy system, transforming the conventional relationship between customers and traditional utilities. Homeowners receive credit for the energy that the solar installation generates to offset energy usage at times when the solar installation is not generating energy. In states that provide for net metering, the customer typically pays for the net energy used or receives a credit against future bills at the retail rate if more energy is produced than consumed. In some states and utility territories, customers are also reimbursed by the electric utility for net excess generation on a periodic basis.

Forty-three states, Puerto Rico and the District of Columbia have adopted some form of net metering. Each of the states where we currently serve customers has adopted some form of a net metering policy. In 2013, however, net metering programs were subject to regulatory scrutiny in some states, such as Arizona, California, Colorado, Idaho and Louisiana. Generally, the programs were upheld in their current form, though some were subject to minor modification and others, including California, have been designated for additional regulatory review in the next few years. In California, for example, the current net metering rules, as applied to the state's three large investor-owned utilities (San Diego Gas and Electric Company, Southern California Edison Company and Pacific Gas and Electric Company), would generally be grandfathered for a period of 20 years, but only for systems installed prior to the earlier of July 1, 2017 or the date the applicable utility reaches its statutory net metering cap. This net metering cap is measured based on the nameplate capacity of net metered systems within the applicable utility's service territory. Currently, the net metering caps for the three large investor-owned utilities are: 607 megawatts for San Diego Gas and Electric Company; 2,240 megawatts for Southern California Edison Company; and 2,409 megawatts for Pacific Gas and Electric Company. Once the net metering cap is reached for one of the three investor-owned utilities, customers of that utility seeking to net meter will be required to take service under the new net metering tariff. As of September 30, 2014, none of these investor-owned utilities had reached 55% of its net metering cap. The statute providing the current caps also provides that, once the new net metering rules are effective, there will be no net metering caps applied to these utilities.

Once the current net metering tariff is no longer available in California, it is unclear whether net metering customers will enjoy the same rate of credit for exporting electricity to the grid and monthly fees that apply only to net metering customers could be imposed.

If net metering caps in certain jurisdictions are reached while they are still in effect, or if the value of the credit that customers receive for net metering is significantly reduced, future customers may be unable to recognize the same level of cost savings associated with net metering that current customers enjoy. The absence of favorable net metering policies or of net metering entirely, or the imposition of new charges that only or disproportionately impact customers that use net metering would significantly limit customer demand for our solar energy systems and the electricity they generate and could adversely impact our business, results of operations and future growth.

***Technical and regulatory limitations may significantly reduce our ability to sell electricity from our solar energy systems in certain markets.***

Technical and regulatory limits may curb our growth in certain key markets. For example, the Federal Energy Regulatory Commission, in promulgating the first form small generator interconnection procedures, recommended limiting customer-sited intermittent generation resources, such as our solar energy systems, to a certain percentage of peak load on a given electrical feeder circuit. Similar limits have been adopted by many states as a de facto standard and could constrain our ability to market to customers in certain geographic areas where the concentration of solar installations exceeds this limit. For example, Hawaiian electric utilities have adopted certain policies that limit distributed electricity generation in certain geographic areas. While these limits have constrained our growth in Hawaii, legislative and regulatory developments in Hawaii have generally allowed distributed electricity generation penetration beyond the electric utility imposed limitations. Future revisions, however, could result in limitations on deployment of solar energy systems in Hawaii, which accounted for approximately 12% of our cumulative installations as of September 30, 2014 and would negatively impact our business. Furthermore, in certain areas, we benefit from policies that allow for expedited or simplified procedures related to connecting solar energy systems to the power grid. If such procedures are changed or cease to be available, our ability to sell the electricity generated by solar energy systems we install may be adversely impacted. As adoption of solar distributed generation rises along with the commercial operation of utility scale solar generation in key markets such as California, the amount of solar energy being fed into the power grid will surpass the amount planned for relative to the amount of

aggregate demand. Some traditional utilities claim that in less than five years, solar generation resources may reach a level capable of producing an over-generation situation, which may require some solar generation resources to be curtailed to maintain operation of the grid. While the prospect of such curtailment is somewhat speculative, the adverse effects of such curtailment without compensation could adversely impact our business, results of operations and future growth.

***We are not currently regulated as an electric utility under applicable law, but we may be subject to regulation as an electric utility in the future.***

We are not regulated as an electric utility in any of the markets in which we currently operate. As a result, we are not subject to the various federal, state and local standards, restrictions and regulatory requirements applicable to traditional utilities. Any federal, state, or local regulations that cause us to be treated as an electric utility, or to otherwise be subject to a similar regulatory regime of commission-approved operating tariffs, rate limitations, and related mandatory provisions, could place significant restrictions on our ability to operate our business and execute our business plan by prohibiting, restricting or otherwise regulating our sale of electricity. If we were subject to the same state or federal regulatory authorities as public electric utilities in the United States or if new regulatory bodies were established to oversee our business in the United States, then our operating costs would materially increase.

***Our business depends in part on the regulatory treatment of third-party owned solar energy systems.***

Retail sales of electricity by non-utilities such as us face regulatory hurdles in some states and jurisdictions, including states and jurisdictions that we intend to enter where the laws and regulatory policies have not historically embraced competition to the service provided by the incumbent, vertically integrated electric utility. Some of the principal challenges pertain to whether non-customer owned systems qualify for the same levels of rebates or other non-tax incentives available for customer-owned solar energy systems, whether third-party owned systems are eligible at all for these incentives and whether third-party owned systems are eligible for net metering and the associated significant cost savings. Furthermore, in some states and utility territories third parties are limited in the way that they may deliver solar to their customers. In jurisdictions such as Arizona, Florida, Georgia, Iowa, Kentucky, North Carolina and Oklahoma and in Los Angeles, California, laws have been interpreted to prohibit the sale of electricity pursuant to our standard power purchase agreement, leading us and other residential solar energy system providers to use leases in lieu of power purchase agreements. Changes in law, reductions in, eliminations of or additional application requirements for, these benefits could reduce demand for our systems, adversely impact our access to capital and could cause us to increase the price we charge our customers for energy.

***If the Internal Revenue Service makes a determination that the fair market value of our solar energy systems is materially lower than what we have reported in our fund tax returns, we may have to pay significant amounts to our investment funds, to our fund investors and/or the U.S. government. Such determinations could have a material adverse effect on our business, financial condition and prospects.***

We report in our fund tax returns and we and our fund investors claim the ITC based on the fair market value of our solar energy systems. While the Internal Revenue Service has not audited the appraisals or fair market value determinations of any of our ITC investment funds to date, scrutiny with respect to fair market value determinations has increased industry-wide in recent years. If the Internal Revenue Service were to review the fair market value that we used to establish our basis for claiming ITCs on audit and determine that the ITCs previously claimed should be reduced, we would owe certain of our investment funds or our fund investors an amount equal to 30% of the investor's share of the difference between the fair market value used to establish our basis for claiming ITCs and the adjusted fair market value determined by the Internal Revenue Service upon audit, plus any costs and expenses associated with a challenge to that fair market value, plus a gross up to pay for additional taxes. We could also be subject to tax liabilities, including interest and penalties based on our share of claimed ITCs. To date, we have not been required to make such payments under any of our investment funds.

Separate from the Internal Revenue Service fair market value determination for purposes of ITCs, the U.S. Treasury Department has issued subpoenas related to its cash grant program and reviewed the fair market value determinations of a number of other significant participants in residential solar investment funds. Although we were not a target of this investigation, after discussions with the U.S. Treasury Department in early 2013, we accepted approximately \$2.5 million less in cash grant payments than we had originally anticipated, a reduction of approximately 12%, which reduction affected a single investment fund. Although we were not obligated to make any payments to the investor in such fund, this resulted in a reduction of the fund investor's overall investment by approximately \$1.0 million. We had no other existing cash grant investment funds as of September 30, 2014, but if we were to enter into such funds in the future we may be required to engage in further discussions with, or otherwise be subject to investigation by, the U.S. Treasury Department in relation to applications for cash grants made by such funds.

***Our ability to provide solar energy systems to customers on an economically viable basis depends on our ability to finance these systems with fund investors who require particular tax and other benefits.***

Solar energy systems that began construction or satisfied a safe harbor by incurring eligible project costs prior to the end of 2011 were eligible to receive a 30% federal cash grant paid by the U.S. Treasury Department under Section 1603 of the “American Recovery and Reinvestment Act of 2009,” or the U.S. Treasury grant. Substantially all of our solar energy systems installed to date have been eligible for ITCs or U.S. Treasury grants, as well as accelerated depreciation benefits. We have relied on, and will continue to rely on, financing structures that monetize a substantial portion of those benefits and provide financing for our solar energy systems. If, for any reason, we were unable to continue to monetize those benefits through these arrangements, we may be unable to provide solar energy systems for new customers and maintain solar energy systems for new and existing customers on an economically viable basis.

The availability of this tax-advantaged financing depends upon many factors, including:

- our ability to compete with other renewable energy companies for the limited number of potential investment fund investors, each of which has limited funds and limited appetite for the tax benefits associated with these financings;
- the state of financial and credit markets;
- changes in the legal or tax risks associated with these financings; and
- non-renewal of these incentives or decreases in the associated benefits.

Solar energy system owners are currently allowed to claim a tax credit that is equal to 30% of the system’s eligible tax basis, which is generally the fair market value of the system. By statute, this tax credit is scheduled to decrease to 10% on January 1, 2017. Moreover, potential fund investors must remain satisfied that the structures we offer qualify for the tax benefits associated with solar energy systems available to these investors, which depends both on the investors’ assessment of tax law and the absence of any unfavorable interpretations of that law. Changes in existing law and interpretations by the Internal Revenue Service and the courts could reduce the willingness of fund investors to invest in funds associated with these solar energy system investments. We cannot assure you that this type of financing will be available to us. Alternatively, new investment fund structures or other financing mechanisms may become available, and if we are unable to take advantage of these fund structures and financing mechanisms it may place us at a competitive disadvantage. If, for any reason, we are unable to finance solar energy systems through tax-advantaged structures or if we are unable to realize or monetize depreciation benefits, or if we are otherwise unable to structure investment funds in ways that are both attractive to investors and allow us to provide desirable pricing to customers, we may no longer be able to provide solar energy systems to new customers on an economically viable basis. This would have a material adverse effect on our business, financial condition, results of operations and prospects.

***Rising interest rates could adversely impact our business.***

Changes in interest rates could have an adverse impact on our business by increasing our cost of capital. For example, rising interest rates would increase our cost of capital and may negatively impact our ability to secure financing on favorable terms needed to build our solar energy systems.

The majority of our cash flows to date have been from customer contracts that have been partially monetized under various investment fund structures. One of the components of this monetization is the present value of the payment streams from the customers who enter into these contracts. If the rate of return required by the fund investor rises as a result of a rise in interest rates, the present value of the customer payment stream and the total value that we are able to derive from monetizing the payment stream will each be reduced. Interest rates are at historically low levels, partially as a result of intervention by the U.S. Federal Reserve. The Federal Reserve has taken actions to begin the tapering off of this intervention and should these actions continue, it is likely that interest rates will rise, our costs of capital will increase and our ability to secure financing could be impeded. Rising interest rates could harm our business and financial condition.

***Our investment funds contain arrangements which provide for priority distributions to fund investors until they receive their targeted rates of return. In addition, under the terms of certain of our investment funds, we may be required to make payments to the investors if certain tax benefits that are allocated to such investors are not realized as expected. Our financial condition may be adversely impacted if a fund is required to make these priority distributions for a longer period than anticipated to achieve the investors’ targeted rates of return or if we are required to make any tax related payments.***

Our fund investors expect returns partially in the form of cash and, to enable such returns, our investment funds contain terms that contractually require the funds to make priority distributions to the fund investor, to the extent cash is available, until it achieves its targeted rate of return. The amounts of potential future distributions under these arrangements depends on the amounts and timing

of receipt of cash flows into the investment fund, almost all of which is generated from customer payments related to solar energy systems that have been previously purchased (or leased, as applicable) by such fund. If such cash flows are lower than expected, the priority distributions to the investor may continue for longer than initially anticipated. Additionally, certain of our investment funds require that, under certain circumstances, we forego distributions from the fund that we are otherwise contractually entitled to so that such distributions can be redirected to the fund investor until it achieves the targeted return.

Our fund investors also expect returns partially in the form of tax benefits and, to enable such returns, our investment funds contain terms that contractually require us to make payments to the funds that are then used to make payments to the fund investor in certain circumstances so that the fund investor receives value equivalent to the tax benefits it expected to receive when entering into the transaction. The amounts of potential tax payments under these arrangements depend on the tax benefits that accrue to such investors from the funds' activities.

Due to uncertainties associated with estimating the timing and amounts of these cash distributions and allocations of tax benefits to such investors, we cannot determine the potential maximum future impact on our cash flows or payments that we could have to make under these arrangements. We may agree to similar terms in the future if market conditions require it. Any significant payments that we may be required to make or distributions to us that are relinquished as a result of these arrangements could adversely affect our financial condition.

***We may incur substantially more debt or take other actions that could restrict our ability to pursue our business strategies.***

In September 2014, we entered into an aggregation credit facility pursuant to which we may borrow up to an aggregate of \$350 million and, subject to certain conditions, up to an aggregate of \$200 million in additional borrowings. The credit facility restricts our ability to dispose of assets, incur indebtedness, incur liens, pay dividends or make other distributions to holders of our capital stock, repurchase our capital stock, make specified investments or engage in transactions with our affiliates. We and our subsidiaries may incur substantial additional debt in the future and any debt instrument we enter into in the future may contain similar restrictions. In addition, certain of our affiliates, including Vivint, are and may in the future be restricted in engaging in transactions with us pursuant to the terms of the instruments governing indebtedness incurred by them. These restrictions could inhibit our ability to pursue our business strategies. Furthermore, if we default on one of our debt instruments, and such event of default is not cured or waived, the lenders could terminate commitments to lend and cause all amounts outstanding with respect to the debt to be due and payable immediately, which in turn could result in cross acceleration under other debt instruments. Our assets and cash flow may not be sufficient to fully repay borrowings under all of our outstanding debt instruments if some or all of these instruments are accelerated upon a default.

Furthermore, there is no assurance that we will be able to enter into new debt instruments on acceptable terms. If we are unable to satisfy financial covenants and other terms under existing or new instruments or obtain waivers or forbearance from our lenders or if we are unable to obtain refinancing or new financings for our working capital, equipment and other needs on acceptable terms if and when needed, our business would be adversely affected.

***Our business is concentrated in certain markets, putting us at risk of region specific disruptions.***

As of September 30, 2014, approximately 51% and 12% of our cumulative installations were in California and Hawaii, and 22 of our 39 offices were located in these states. In addition, we expect future growth to occur in California, which could further concentrate our customer base and operational infrastructure. Accordingly, our business and results of operations are particularly susceptible to adverse economic, regulatory, political, weather and other conditions in such markets and in other markets that may become similarly concentrated.

***It is difficult to evaluate our business and prospects due to our limited operating history.***

Since our formation in 2011, we have focused our efforts exclusively on the sales, financing, engineering, installation, maintenance and monitoring of solar energy systems for residential customers. We may be unsuccessful in significantly broadening our customer base through installation of solar energy systems within our current markets or in new markets we may enter. Our limited operating history, combined with the rapidly evolving and competitive nature of our industry, may not provide an adequate basis for you to evaluate our operating and financial results and business prospects. In addition, we have limited insight into emerging trends that may adversely impact our business, prospects and operating results.

Additionally, due to our limited operating history, we do not have empirical evidence of the effect of our systems on the resale value of our customers' houses. Due to the length of our customer contracts, the system deployed on a customer's roof may be outdated prior to the expiration of the term of the customer contract reducing the likelihood of renewal of our contracts at the end of the 20-year term, and possibly increasing the occurrence of defaults. This could have an adverse effect on our business, financial

condition, results of operations and cash flow. As a result, our limited operating history may impair our ability to accurately forecast our future performance and to invest accordingly.

***A material weakness in our internal control over financial reporting relating to inadequate financial statement preparation and review procedures was identified in connection with the preparation of our consolidated financial statements and resulted in the restatement of certain of our financial statements.***

In connection with the preparation, audits and interim reviews of our consolidated financial statements, we and our independent registered public accounting firm identified a material weakness in internal control over financial reporting. This material weakness was further evidenced by errors discovered during the preparation and review of our consolidated financial statements as of and for the six months ended June 30, 2014 which resulted in the restatement of our consolidated financial statements as of and for the year ended December 31, 2013 and as of and for the three months ended March 31, 2014. These errors included, but were not limited to: (1) incorrectly accounting for income taxes, (2) incorrect inputs in the HLBV method of attributing net income or loss to non-controlling interests and redeemable non-controlling interests and (3) the incorrect classification of paid-in-kind interest in our statement of cash flows.

Under standards established by the Public Company Accounting Oversight Board, a material weakness is a deficiency or combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected and corrected on a timely basis. This material weakness resulted from several control deficiencies.

Specifically and in addition to the errors that resulted in the restatement discussed above, we and our independent registered public accounting firm identified a number of material errors and other audit adjustments and determined that we did not design and implement sufficient controls and processes and did not have a sufficient number of qualified accounting and finance personnel. Additionally, the nature of our investment funds increases the complexity of our accounting for the allocation of net income (loss) between our stockholders and non-controlling interests under the HLBV method and the calculation of our tax provision. As we enter into additional investment funds, which may have contractual provisions different from those of our existing funds, the calculation under the HLBV method and the calculation of our tax provision could become increasingly complicated. This additional complexity could increase the chance that we experience additional errors in the future, particularly because we have a material weakness in internal controls. In addition, our need to devote our resources to addressing this complexity could delay or prolong our remediation efforts and thereby prolong the existence of the material weakness. As a result, we and our independent registered public accounting firm determined that we did not have adequate procedures and controls and adequate personnel to ensure that accurate financial statements could be prepared on a timely basis.

To remediate this material weakness, we believe that we must continue to add qualified accounting, finance and tax personnel, formalize and implement written policies and procedures for the review of account analyses, tax provisions, reconciliations and journal entries, and implement and improve systems to automate certain financial reporting processes and to improve efficiency and accuracy.

We have begun taking numerous steps and plan to take additional steps to remediate the underlying causes of the material weakness. The actions that we are taking are subject to ongoing senior management review as well as audit committee oversight. We cannot estimate how long it will take to remediate the material weakness, although we expect it will take at least a year and may take more than a year, and our initiatives may not prove to be successful in remediating this material weakness.

If in future periods we determine that this material weakness has not been remediated or we identify other material weaknesses in internal control over financial reporting, we will be unable to assert that our internal control over financial reporting is effective, which could result in the loss of investor confidence. In addition, to date, the audit of our consolidated financial statements by our independent registered public accounting firm has included a consideration of internal control over financial reporting as a basis of designing their audit procedures, but not for the purpose of expressing an opinion on the effectiveness of our internal controls over financial reporting. When we cease to be an emerging growth company we will be required to have our independent registered accounting firm perform such an evaluation, and additional material weaknesses or other control deficiencies may be identified.

If we are unable to successfully remediate our current material weakness or avoid or remediate any future material weakness, our stock price may be adversely affected and we may be unable to maintain compliance with applicable stock exchange listing requirements.

***We have incurred operating losses and may be unable to achieve or sustain profitability in the future.***

We have incurred operating losses since our inception. We incurred net losses of \$56.5 million and \$127.8 million for the year ended December 31, 2013 and the nine months ended September 30, 2014. We expect to continue to incur net losses from operations

as we increase our spending to finance the expansion of our operations, expand our installation, engineering, administrative, sales and marketing staffs, and implement internal systems and infrastructure to support our growth. In addition, as a public company, we will incur significant additional legal, accounting and other expenses that we did not incur as a private company. We do not know whether our revenue will grow rapidly enough to absorb these costs, and our limited operating history makes it difficult to assess the extent of these expenses or their impact on our operating results. Our ability to achieve profitability depends on a number of factors, including:

- growing our customer base;
- finding investors willing to invest in our investment funds;
- maintaining and further lowering our cost of capital;
- reducing the cost of components for our solar energy systems; and
- reducing our operating costs by optimizing our sales, design and installation processes and supply chain logistics.

Even if we do achieve profitability, we may be unable to sustain or increase our profitability in the future.

***Substantially all of our business is conducted primarily using one channel, direct-selling.***

While we are in the process of evaluating different distribution channels, currently substantially all of our business is conducted using direct-selling. We compete against companies that sell solar energy systems to customers through a number of distribution channels, including homebuilders, home improvement stores, large construction, electrical and roofing companies and other third parties and companies that access customers through relationships with third parties in addition to other direct-selling companies. This single distribution channel may place us at a disadvantage with consumers who prefer to purchase products through these other distribution channels. Additionally, we are vulnerable to changes in laws related to direct marketing as regulations have limited unsolicited residential sales calls and may impose additional restrictions. If additional laws affecting direct marketing are passed in the markets in which we operate, it would take time to train our sales force to comply with such laws, and we may be exposed to fines or other penalties for violations of such laws. If we fail to compete effectively through our direct-selling efforts or are not successful in executing our strategy to sell our solar energy systems through other channels, our financial condition, results of operations and growth prospects will be adversely affected.

***We are highly dependent on our ability to attract, train and retain an effective sales force.***

The success of our direct-selling channel efforts depends upon the recruitment, retention and motivation of a large number of sales personnel to compensate for a high turnover rate among sales personnel, which is a common characteristic of a direct-selling business. In order to grow our business, we need to recruit, train and retain sales personnel on a continuing basis. Historically, we have recruited a large portion of our sales personnel from our sister company, Vivint, particularly in California and Hawaii where a significant portion of our business is concentrated. As disclosed in the section of the Prospectus captioned, “Related Party Transactions—Expected Agreements with Vivint—Non-Competition Agreement,” we and Vivint have agreed not to solicit for employment any of the other’s employees who primarily manage sales, installation or servicing of the other’s products and services. The commitment not to solicit those employees lasts for 180 days after the employee finishes employment with us or Vivint. In the future, we will need to recruit greater numbers of our sales personnel from other sources and we may be unable to successfully do so.

Sales personnel are attracted to direct-selling by competitive earnings opportunities and so direct-sellers typically compete for sales personnel by providing a more competitive earnings opportunity than that offered by the competition. Competitors devote substantial effort to determining the effectiveness of such incentives so that they can invest in incentives that are the most cost effective or produce the best return on incentive. For example, we have historically compensated our sales personnel on a commission basis, based on the size of the solar energy systems they sell. Some sales personnel may prefer a compensation structure that also includes a salary and equity incentive component. We may need to adjust our compensation model to include such components, and these adjustments could adversely impact our operating results and financial performance.

In addition to our sales compensation model, our ability to recruit, train and retain effective sales personnel could be harmed by additional factors, including:

- any adverse publicity regarding us, our solar energy systems, our distribution channel, or our industry;
- lack of interest in, or the technical failure of, our solar energy systems;
- lack of a compelling product or income opportunity that generates interest for potential new sales personnel, or perception that other product or income opportunities are more attractive;
- any negative public perception of our sales personnel and direct-selling businesses in general;

- any regulatory actions or charges against us or others in our industry;
- general economic and business conditions; and
- potential saturation or maturity levels in a given market which could negatively impact our ability to attract and retain sales personnel in such market.

We are subject to significant competition for the recruitment of sales personnel from other direct-selling companies and from other companies that sell solar energy systems in particular. It is therefore continually necessary to innovate and enhance our direct-selling and service model as well as to recruit and retain new sales personnel. If we are unable to do so, our business will be adversely affected.

***A failure to hire and retain a sufficient number of employees in key functions would constrain our growth and our ability to timely complete our customers' projects.***

To support our growth, we need to hire, train, deploy, manage and retain a substantial number of skilled installers and electricians in the relevant markets. Competition for qualified personnel in our industry is increasing, particularly for skilled electricians and other personnel involved in the installation of solar energy systems. We also compete with the homebuilding and construction industries for skilled labor. As these industries seek to hire additional workers, our cost of labor may increase. In addition, we compensate our installers and electricians based on the number of solar energy systems they install. Companies with whom we compete to hire installers may offer an hourly rate or equity incentive component, which certain installers may prefer. Furthermore, trained installers are typically able to more efficiently install solar energy systems. Shortages of skilled labor could significantly delay installations or otherwise increase our costs. While we do not currently have any unionized employees, we have expanded, and may continue to expand, into areas such as the Northeast, where labor unions are more prevalent. The unionization of our labor force could also increase our labor costs. In addition, a significant portion of our business has been concentrated in California and Hawaii where market conditions are favorable to distributed solar energy generation. We have experienced and may in the future experience greater than expected turnover in our installers in those jurisdictions which would adversely impact the geographic mix of new solar energy system installations.

Because we are a licensed electrical contractor in every jurisdiction in which we operate, we are required to employ licensed electricians. As we expand into new markets, we are required to hire and/or contract with seasoned licensed electricians in order for the company to qualify for the requisite state and local licenses. Because of the high demand for these seasoned licensed electricians, these individuals currently or in the future may demand greater compensation. In addition, our inability to attract and retain these qualifying electricians may adversely impact our ability to continue operations in current markets or expand into new areas.

If we cannot meet our hiring, retention and efficiency goals, we may be unable to complete our customers' projects on time, in an acceptable manner or at all. Any significant failures in this regard would materially impair our growth, reputation, business and financial results. If we are required to pay higher compensation than we anticipate, these greater expenses may also adversely impact our financial results and the growth of our business.

***Historically, we have only provided our offerings to residential customers, which could put us at a disadvantage relative to companies who also compete in other markets.***

We have historically only provided our offerings to residential customers. We compete with companies who sell solar panels in the commercial and government markets, in addition to the residential market. While we are considering the option of expanding into markets outside of the residential market, such as the small business market, and while we believe that in the future we may have opportunities to expand our operations into other markets, there are no assurances that our design and installation systems will work for non-residential customers or that we will be able to compete successfully with companies with historical presences in such markets. Additionally, there is intense competition in the residential solar energy market in the markets in which we operate. As new entrants continue to enter into these markets, we may be unable to gain or maintain market share and we may be unable to compete with companies that earn revenue in both the residential market and non-residential markets.

***We face competition from traditional regulated electric utilities, from less-regulated third party energy service providers and from new renewable energy companies.***

The solar energy and renewable energy industries are both highly competitive and continually evolving as participants strive to distinguish themselves within their markets and compete with large traditional utilities. We believe that our primary competitors are the traditional utilities that supply electricity to our potential customers. Traditional utilities generally have substantially greater financial, technical, operational and other resources than we do. As a result, these competitors may be able to devote more resources to the research, development, promotion and sale of their products or respond more quickly to evolving industry standards and changes

in market conditions than we can. Traditional utilities could also offer other value-added products or services that could help them to compete with us even if the cost of electricity they offer is higher than ours. In addition, a majority of utilities' sources of electricity is non-solar, which may allow utilities to sell electricity more cheaply than electricity generated by our solar energy systems.

We also compete with companies that are not regulated like traditional utilities but that have access to the traditional utility electricity transmission and distribution infrastructure pursuant to state and local pro-competitive and consumer choice policies. These energy service companies are able to offer customers electricity supply-only solutions that are competitive with our solar energy system options on both price and usage of renewable energy technology while avoiding the long-term agreements and physical installations that our current fund-financed business model requires. This may limit our ability to attract new customers, particularly those who wish to avoid long-term contracts or have an aesthetic or other objection to putting solar panels on their roofs.

We also compete with solar companies with business models that are similar to ours. In addition, we compete with solar companies in the downstream value chain of solar energy. For example, we face competition from purely finance driven organizations that acquire customers and then subcontract out the installation of solar energy systems, from installation businesses that seek financing from external parties, from large construction companies and utilities, and increasingly from sophisticated electrical and roofing companies. Some of these competitors specialize in the residential solar energy market, and some may provide energy at lower costs than we do. Further, some of our competitors are integrating vertically in order to ensure supply and to control costs. Many of our competitors also have significant brand name recognition and have extensive knowledge of our target markets. For us to remain competitive, we must distinguish ourselves from our competitors by offering an integrated approach that successfully competes with each level of products and services offered by our competitors at various points in the value chain. If our competitors develop an integrated approach similar to ours including sales, financing, engineering, manufacturing, installation, maintenance and monitoring services, this will reduce our marketplace differentiation.

As the solar industry grows and evolves, we will also face new competitors who are not currently in the market. Our industry is characterized by low technological barriers to entry and well-capitalized companies could choose to enter the market and compete with us. Our failure to adapt to changing market conditions and to compete successfully with existing or new competitors will limit our growth and will have a material adverse effect on our business and prospects.

***Developments in alternative technologies or improvements in distributed solar energy generation may materially adversely affect demand for our offerings.***

Significant developments in alternative technologies, such as advances in other forms of distributed solar power generation, storage solutions such as batteries, the widespread use or adoption of fuel cells for residential or commercial properties or improvements in other forms of centralized power production may materially and adversely affect our business and prospects in ways we do not currently anticipate. Any failure by us to adopt new or enhanced technologies or processes, or to react to changes in existing technologies, could materially delay deployment of our solar energy systems, which could result in product obsolescence, the loss of competitiveness of our systems, decreased revenue and a loss of market share to competitors.

***We depend on a limited number of suppliers of solar energy system components and technologies to adequately meet anticipated demand for our solar energy systems. Due to the limited number of suppliers in our industry, the acquisition of any of these suppliers by a competitor or any shortage, delay, price change, imposition of tariffs or duties or other limitation in our ability to obtain components or technologies we use could result in sales and installation delays, cancellations and loss of market share.***

We purchase solar panels, inverters and other system components from a limited number of suppliers, making us susceptible to quality issues, shortages and price changes. In 2013, Trina Solar Limited and Yingli Green Energy Americas, Inc. accounted for substantially all of our solar photovoltaic module purchases and Enphase Energy, Inc. accounted for all of our inverter purchases. If we fail to develop, maintain and expand our relationships with these or other suppliers, our ability to adequately meet anticipated demand for our solar energy systems may be adversely affected, or we may only be able to offer our systems at higher costs or after delays. If one or more of the suppliers that we rely upon to meet anticipated demand ceases or reduces production due to its financial condition, acquisition by a competitor or otherwise, is unable to increase production as industry demand increases or is otherwise unable to allocate sufficient production to us, it may be difficult to quickly identify alternate suppliers or to qualify alternative products on commercially reasonable terms, and our ability to satisfy this demand may be adversely affected. There are a limited number of suppliers of solar energy system components and technologies. While we believe there are other sources of supply for these products available, transitioning to a new supplier may result in additional costs and delays in acquiring our solar products and deploying our systems. These issues could harm our business or financial performance.

In addition, the acquisition of a component supplier or technology provider by one of our competitors could limit our access to such components or technologies and require significant redesigns of our solar energy systems or installation procedures and have a material adverse effect on our business. For example, the recent acquisition of Zep Solar, Inc., who sold us virtually all of the racking systems used in our hardware in 2013, by one of our competitors and the resulting limitation in our ability to acquire Zep Solar, Inc. products required us to redesign certain aspects of our systems to accommodate alternative racking hardware. In addition, some of our

investment funds require the use of designated equipment, and our inability to obtain any such required equipment could limit our ability to finance solar energy systems that we intend to place in those funds.

There have also been periods of industry-wide shortages of key components, including solar panels, in times of rapid industry growth. The manufacturing infrastructure for some of these components has a long lead-time, requires significant capital investment and relies on the continued availability of key commodity materials, potentially resulting in an inability to meet demand for these components. The solar industry is currently experiencing rapid growth and, as a result, shortages of key components, including solar panels, may be more likely to occur, which in turn may result in price increases for such components. Even if industry-wide shortages do not occur, suppliers may decide to allocate key components with high demand or insufficient production capacity to more profitable customers, customers with long-term supply agreements or customers other than us and our supply of such components may be reduced as a result.

Typically, we purchase the components for our solar energy systems on an as-needed basis and do not operate under long-term supply agreements. All of these purchases under these purchase orders are denominated in U.S. dollars. Since our revenue is also generated in U.S. dollars we are mostly insulated from currency fluctuations. However, since our suppliers often incur a significant amount of their costs by purchasing raw materials and generating operating expenses in foreign currencies, if the value of the U.S. dollar depreciates significantly or for a prolonged period of time against these other currencies this may cause our suppliers to raise the prices they charge us, which could harm our financial results. Since we purchase almost all of the solar photovoltaic modules we use from China, we are particularly exposed to exchange rate risk from increases in the value of the Chinese Renminbi. In addition, the U.S. government has recently imposed tariffs on solar cells manufactured in China and is investigating pricing practices concerning solar panels manufactured in China and Taiwan that contain solar cells produced in other countries, at the conclusion of which it could impose additional tariffs or duties. Any such tariffs or duties, or shortages, delays, price changes or other limitation in our ability to obtain components or technologies we use could limit our growth, cause cancellations or adversely affect our profitability, and result in loss of market share and damage to our brand.

***Our operating results may fluctuate from quarter to quarter, which could make our future performance difficult to predict and could cause our operating results for a particular period to fall below expectations, resulting in a severe decline in the price of our common stock.***

Our quarterly operating results are difficult to predict and may fluctuate significantly in the future. We have experienced seasonal and quarterly fluctuations in the past. However, given that we are an early-stage company operating in a rapidly growing industry, the true extent of these fluctuations may have been masked by our recent growth rates and thus may not be readily apparent from our historical operating results and may be difficult to predict. For example, the amount of revenue we recognize in a given period from our customer contracts is dependent in part on the amount of energy generated by solar energy systems under such contracts. As a result, revenue derived from power purchase agreements is impacted by seasonally shorter daylight hours in winter months. In addition, our ability to install solar energy systems is impacted by weather, as for example during the winter months in the Northeastern United States. Such delays can impact the timing of when we can install and begin to generate revenue from solar energy systems. As such, our past quarterly operating results may not be good indicators of future performance.

In addition to the other risks described in this “Risk Factors” section, the following factors could cause our operating results to fluctuate:

- the expiration or initiation of any rebates or incentives;
- significant fluctuations in customer demand for our offerings;
- our ability to complete installations in a timely manner;
- the availability and costs of suitable financing;
- the amount and timing of sales of SRECs;
- our ability to continue to expand our operations, and the amount and timing of expenditures related to this expansion;
- actual or anticipated changes in our growth rate relative to our competitors;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital-raising activities or commitments;
- changes in our pricing policies or terms or those of our competitors, including traditional utilities; and
- actual or anticipated developments in our competitors’ businesses or the competitive landscape.

For these or other reasons, the results of any prior quarterly or annual periods should not be relied upon as indications of our future performance. In addition, our actual revenue, key operating metrics and other operating results in future quarters may fall short of the expectations of investors and financial analysts, which could have an adverse effect on the trading price of our common stock.

***Our business has benefited from the declining cost of solar panels, and our financial results may be harmed now that the cost of solar panels has stabilized and could increase in the future.***

The declining cost of solar panels and the raw materials necessary to manufacture them has been a key driver in the price we charge for electricity and customer adoption of solar energy. According to industry experts, solar panel and raw material prices are not expected to continue to decline at the same rate as they have over the past several years. In addition, growth in the solar industry and the resulting increase in demand for solar panels and the raw materials necessary to manufacture them may also put upward pressure on prices. The resulting prices could slow our growth and cause our financial results to suffer. In addition, in the past we have purchased virtually all of the solar panels used in our solar energy systems from manufacturers based in China which have benefited from favorable governmental policies by the Chinese government. If this governmental support were to decrease or be eliminated, our ability to purchase these products on competitive terms or to access specialized technologies from China could be restricted. Even if this support were to continue, the U.S. government could impose additional tariffs on solar cells manufactured in China. In 2012, the U.S. government imposed anti-dumping tariffs on Chinese crystalline silicon photovoltaic cells on a manufacturer specific basis with rates ranging from approximately 18.3% to 250.0%, and applicable countervailing duty rates ranging from approximately 14.8% to 16.0%. In January 2014, the U.S. government broadened its investigation of Chinese pricing practices in this area to include solar panels and modules produced in China containing solar cells manufactured in other countries. On June 10, 2014, the U.S. government issued a preliminary determination of countervailing subsidies by China and has proposed duties ranging from 18.6% to 35.2% on Chinese solar companies importing certain solar products into the United States, including our solar panel suppliers. On July 25, 2014, the U.S. government issued a separate preliminary determination imposing antidumping duties on imports of certain solar products from China. Although the exact applicability remains unclear, these duties are at rates of 26.3% to 165% for affected Chinese products, including one of our solar panel suppliers, Trina Solar Limited. The U.S. government issued a separate preliminary determination relating to imports of solar products from Taiwan, with duties at rates from 20.9% to 27.6% for affected Taiwanese products (although we do not currently purchase Taiwanese products). To the extent that the U.S. government makes a final determination that U.S. market participants experience harm from these Chinese pricing practices, such solar panels could become subject to these or additional tariffs. These combined tariffs would make such solar cells less competitively priced in the United States, and the Chinese and Taiwanese manufacturers may choose to limit the amount of solar equipment they sell into the United States. As a result, it may be easier for solar cell manufacturers located outside of China or Taiwan to increase the prices of the solar cells they sell into the United States. If we are required to pay higher prices, accept less favorable terms or purchase solar panels or other system components from alternative, higher-priced sources, our financial results will be adversely affected.

***The residual value of our solar energy systems at the end of the associated term of the lease or power purchase agreement may be lower than projected today and adversely affect our financial performance and valuation.***

We intend to amortize the costs of our solar energy systems over 30 years for accounting purposes, which exceeds the period of the component warranties and the corresponding payment streams from our contracts with our customers. If we incur repair and maintenance costs on these systems after the warranties have expired, and if they then fail or malfunction, we will be liable for the expense of repairing these systems without a chance of recovery from our suppliers. In addition, we typically bear the cost of removing the solar energy systems at the end of the term of the customer contract if the customer does not renew his or her contract at the end of its term. Furthermore, it is difficult to predict how future environmental regulations may affect the costs associated with the removal, disposal or recycling of our solar energy systems. If the residual value of the systems is less than we expect at the end of the customer contract, after giving effect to any associated removal and redeployment costs, we may be required to accelerate all or some of the remaining unamortized costs. This could materially impair our future operating results and estimated retained value.

***We act as the licensed general contractor for our customers and are subject to risks associated with construction, cost overruns, delays, regulatory compliance and other contingencies, any of which could have a material adverse effect on our business and results of operations.***

We are a licensed contractor in every market we service and we are responsible for every customer installation. We are the general contractor, electrician, construction manager and installer for all our solar energy systems. We may be liable to customers for any damage we cause to their home, belongings or property during the installation of our systems. For example, we penetrate our customers' roofs during the installation process and may incur liability for the failure to adequately weatherproof such penetrations following the completion of installation of solar energy systems. In addition, because the solar energy systems we deploy are high-voltage energy systems, we may incur liability for the failure to comply with electrical standards and manufacturer recommendations. Because our profit on a particular installation is based in part on assumptions as to the cost of such project, cost overruns, delays or other execution issues may cause us to not achieve our expected results or cover our costs for that project.

In addition, the installation of solar energy systems is subject to oversight and regulation in accordance with national, state and local laws and ordinances relating to building, fire and electrical codes, safety, environmental protection, utility interconnection and metering, and related matters. We also rely on certain of our employees to maintain professional licenses in many of the jurisdictions in which we operate, and our failure to employ properly licensed personnel could adversely affect our licensing status in those jurisdictions. It is difficult and costly to track the requirements of every authority having jurisdiction over our operations and our solar energy systems. Any new government regulations or utility policies pertaining to our systems, or changes to existing government regulations or utility policies pertaining to our systems, may result in significant additional expenses to us and our customers and, as a result, could cause a significant reduction in demand for our systems.

***Compliance with occupational safety and health requirements and best practices can be costly, and noncompliance with such requirements may result in potentially significant monetary penalties, operational delays and adverse publicity.***

The installation of solar energy systems requires our employees to work at heights with complicated and potentially dangerous electrical systems. The evaluation and modification of buildings as part of the installation process requires our employees to work in locations that may contain potentially dangerous levels of asbestos, lead, mold or other materials known or believed to be hazardous to human health. We also maintain a fleet of more than 400 trucks and other vehicles to support our installers and operations. There is substantial risk of serious injury or death if proper safety procedures are not followed. Our operations are subject to regulation under the U.S. Occupational Safety and Health Act, or OSHA, the U.S. Department of Transportation, or DOT, and equivalent state laws. Changes to OSHA or DOT requirements, or stricter interpretation or enforcement of existing laws or regulations, could result in increased costs. If we fail to comply with applicable OSHA regulations, even if no work-related serious injury or death occurs, we may be subject to civil or criminal enforcement and be required to pay substantial penalties, incur significant capital expenditures or suspend or limit operations. Because our installation employees are compensated on a per project basis, they are incentivized to work more quickly than installers that are compensated on an hourly basis. While we have not experienced a high level of injuries to date, this incentive structure may result in higher injury rates than others in the industry and could accordingly expose us to increased liability. In the past, we have had workplace accidents and received citations from OSHA regulators for alleged safety violations, resulting in fines. Any such accidents, citations, violations, injuries or failure to comply with industry best practices may subject us to adverse publicity, damage our reputation and competitive position and adversely affect our business.

***Problems with product quality or performance may cause us to incur expenses, may lower the residual value of our solar energy systems and may damage our market reputation and adversely affect our financial results.***

We agree to maintain the solar energy systems installed on our customers' homes during the length of the term of our customer contracts, which is typically 20 years. We are exposed to any liabilities arising from the systems' failure to operate properly and are generally under an obligation to ensure that each system remains in good condition during the term of the agreement. As part of our operations and maintenance work, we provide a pass-through of the inverter and panel manufacturers' warranty coverage to our customers, which generally range from 10 to 25 years. One of these third-party manufacturers could cease operations and no longer honor these warranties, leaving us to fulfill these potential obligations to our customers or to our fund investors without underlying warranty coverage. In most of our investment funds, the fund itself would bear this cost; however, in certain funds we would bear this cost with respect to such major equipment. Even if the investment fund bears the direct expense of such replacement equipment, we could suffer financial losses associated with a loss of production from the solar energy systems.

Beginning in 2014, we began structuring some customer contracts as solar energy system leases. To be competitive in the market our solar energy system leases contain a performance guarantee in favor of the lessee. Leases with performance guarantees require us to refund money to the lessee if the solar energy system fails to generate the minimum amount of electricity in a 12-month period. We may also suffer financial losses associated with such refunds if a performance guarantee payment is triggered.

Although we have not had material claims in the past, we may incur material claims in the future. Our failure to accurately predict future claims could result in unexpected volatility in our financial condition. Because of the limited operating history of our solar energy systems, we have been required to make assumptions and apply judgments regarding a number of factors, including our anticipated rate of warranty claims, and the durability, performance and reliability of our solar energy systems. We have made these assumptions based on the historic performance of similar systems or on accelerated life cycle testing. Our assumptions could prove to be materially different from the actual performance of our systems, causing us to incur substantial expense to repair or replace defective solar energy systems in the future or to compensate customers for systems that do not meet their production guarantees. Equipment defects, serial defects or operational deficiencies also would reduce our revenue from power purchase agreements because the customer payments under such agreements are dependent on system production or require us to make refunds under the performance guarantees under our leases. Any widespread product failures or operating deficiencies may damage our market reputation and adversely impact our financial results.

***We are responsible for providing maintenance, repair and billing on solar energy systems that are owned or leased by our investment funds on a fixed fee basis, and our financial performance could be adversely affected if our cost of providing such services is higher than we project.***

We typically provide a five-year workmanship warranty to our investment funds for every system sold thereto. We are also generally obligated to cover the cost of maintenance, repair and billing on any solar energy systems that we sell or lease to our investment funds. We are subject to a maintenance services agreement under which we are required to operate and maintain the system, and perform customer billing services for a fixed fee that is calculated to cover our future expected maintenance and servicing costs of the solar energy systems in each investment fund over the term of the lease or power purchase agreement with the covered customers. If our solar energy systems require an above-average amount of repairs or if the cost of repairing systems were higher than our estimate, we would need to perform such repairs without additional compensation. If our solar energy systems, a majority of which are located in California and Hawaii, are damaged in the event of a natural disaster beyond our control, such as an earthquake, tsunami or hurricane, losses could be outside the scope of insurance policies or exceed insurance policy limits, and we could incur unforeseen costs that could harm our business and financial condition. We may also incur significant costs for taking other actions in preparation for, or in reaction to, such events. When required to do so under the terms of a particular investment fund, we purchase property and business interruption insurance with industry standard coverage and limits approved by the investor's third-party insurance advisors to hedge against such risk, but such coverage may not cover our losses, and we have not acquired such coverage for all of our funds.

***Product liability claims against us or accidents could result in adverse publicity and potentially significant monetary damages.***

If one of our solar energy systems injured someone, we could be exposed to product liability claims. In addition, it is possible that our products could injure our customer or third parties, or that our products could cause property damage as a result of product malfunctions, defects, improper installation, fire or other causes. We rely on our general liability insurance to cover product liability claims. Any product liability claim we face could be expensive to defend and divert management's attention. The successful assertion of product liability claims against us could result in potentially significant monetary damages, penalties or fines, subject us to adverse publicity, damage our reputation and competitive position and adversely affect sales of our systems and other products. In addition, product liability claims, injuries, defects or other problems experienced by other companies in the residential solar industry could lead to unfavorable market conditions to the industry as a whole, and may have an adverse effect on our ability to attract new customers, thus affecting our growth and financial performance.

***Failure by our component suppliers to use ethical business practices and comply with applicable laws and regulations may adversely affect our business.***

We do not control our suppliers or their business practices. Accordingly, we cannot guarantee that they follow ethical business practices such as fair wage practices and compliance with environmental, safety and other local laws. A lack of demonstrated compliance could lead us to seek alternative suppliers, which could increase our costs and result in delayed delivery of our products, product shortages or other disruptions of our operations. Violation of labor or other laws by our suppliers or the divergence of a supplier's labor or other practices from those generally accepted as ethical in the United States or other markets in which we do business could also attract negative publicity for us and harm our business.

***Damage to our brand and reputation, or change or loss of use of our brand, would harm our business and results of operations.***

We depend significantly on our reputation for high-quality products, best-in-class customer service and the brand name "Vivint Solar" to attract new customers and grow our business. If we fail to continue to deliver our solar energy systems within the planned timelines, if our offerings do not perform as anticipated or if we damage any of our customers' properties or delay or cancel projects, our brand and reputation could be significantly impaired. Future technical improvements may allow us to offer lower prices or offer new technology to new customers; however, technical limitations in our current solar energy systems may prevent us from offering such lower prices or new technology to our existing customers. The inability of our current customers to benefit from technological improvements could cause our existing customers to lower the value they perceive our existing products offer and impair our brand and reputation.

We have focused particular attention on growing our direct sales force, leading us in some instances to take on candidates who we later determined did not fit our company culture. This has led to instances of customer complaints, some of which have affected our digital footprint on rating websites such as that for the Better Business Bureau. If we cannot manage our hiring and training processes to avoid these issues, our reputation may be harmed and our ability to attract new customers would suffer.

Given our past relationship with our sister company Vivint and the similarity in our names, customers may associate us with any problems experienced with Vivint, such as complaints with the Better Business Bureau. Because we have no control over Vivint, we may not be able to take remedial action to cure any issues Vivint has with its customers, and our brand and reputation may be harmed if we are mistaken for the same company.

In addition, if we were to no longer use, lose the right to continue to use, or if others use, the “Vivint Solar” brand, we could lose recognition in the marketplace among customers, suppliers and partners, which could affect our growth and financial performance, and would require financial and other investment, and management attention in new branding, which may not be as successful.

***Marketplace confidence in our liquidity and long-term business prospects is important for building and maintaining our business.***

Our financial condition, operating results and business prospects may suffer materially if we are unable to establish and maintain confidence about our liquidity and business prospects among consumers and within our industry. Our solar energy systems require ongoing maintenance and support. If we were to reduce operations, even years from now, buyers of our systems from years earlier might have difficulty in having us repair or service our systems, which remain our responsibility under the terms of our customer contracts. As a result, consumers may be less likely to purchase our solar energy systems now if they are uncertain that our business will succeed or that our operations will continue for many years. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed. Accordingly, in order to build and maintain our business, we must maintain confidence among customers, suppliers and other parties in our liquidity and long-term business prospects. We may not succeed in our efforts to build this confidence.

***If we fail to manage our recent and future growth effectively, we may be unable to execute our business plan, maintain high levels of customer service or adequately address competitive challenges.***

We have experienced significant growth in recent periods with the cumulative capacity of our solar energy systems growing from 14.8 megawatts as of December 31, 2012 to 178.2 megawatts as of September 30, 2014, and we intend to continue to expand our business significantly within existing markets and in a number of new locations in the future. This growth has placed, and any future growth may place, a significant strain on our management, operational and financial infrastructure. In particular, we will be required to expand, train and manage our growing employee base and scale and otherwise improve our IT infrastructure in tandem with that headcount growth. Our management will also be required to maintain and expand our relationships with customers, suppliers and other third parties and attract new customers and suppliers, as well as manage multiple geographic locations.

In addition, our current and planned operations, personnel, IT and other systems and procedures might be inadequate to support our future growth and may require us to make additional unanticipated investments in our infrastructure. Our success and ability to further scale our business will depend, in part, on our ability to manage these changes in a cost-effective and efficient manner. If we cannot manage our growth, we may be unable to take advantage of market opportunities, execute our business strategies or respond to competitive pressures. This could also result in declines in quality or customer satisfaction, increased costs, difficulties in introducing new offerings or other operational difficulties. Any failure to effectively manage growth could adversely impact our business and reputation.

***We may not realize the anticipated benefits of past or future acquisitions, and integration of these acquisitions may disrupt our business and management.***

We acquired Solmetric Corporation in January 2014 and in the future we may acquire additional companies, project pipelines, products or technologies or enter into joint ventures or other strategic initiatives. We may not realize the anticipated benefits of this acquisition or any other future acquisition, and any acquisition has numerous risks. These risks include the following:

- difficulty in assimilating the operations and personnel of the acquired company;
- difficulty in effectively integrating the acquired technologies or products with our current technologies;
- difficulty in maintaining controls, procedures and policies during the transition and integration;
- disruption of our ongoing business and distraction of our management and employees from other opportunities and challenges due to integration issues;
- difficulty integrating the acquired company’s accounting, management information and other administrative systems;
- inability to retain key technical and managerial personnel of the acquired business;
- inability to retain key customers, vendors and other business partners of the acquired business;

- inability to achieve the financial and strategic goals for the acquired and combined businesses;
- incurring acquisition-related costs or amortization costs for acquired intangible assets that could impact our operating results;
- potential failure of the due diligence processes to identify significant issues with product quality, intellectual property infringement and other legal and financial liabilities, among other things;
- potential inability to assert that internal controls over financial reporting are effective; and
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities, which could delay or prevent such acquisitions.

Mergers and acquisitions of companies are inherently risky, and if we do not complete the integration of acquired businesses successfully and in a timely manner, we may not realize the anticipated benefits of the acquisitions to the extent anticipated, which could adversely affect our business, financial condition or results of operations.

***The loss of one or more members of our senior management or key employees may adversely affect our ability to implement our strategy.***

We depend on our experienced management team, and the loss of one or more key executives could have a negative impact on our business. In particular, we are dependent on the services of our chief executive officer, Greg Butterfield. We also depend on our ability to retain and motivate key employees and attract qualified new employees. None of our key executives are bound by employment agreements for any specific term and we do not maintain key person life insurance policies on any of our executive officers. In addition, two-thirds of the outstanding options to purchase shares of our common stock granted to our key executives and other employees under our 2013 Omnibus Incentive Plan will vest if Blackstone receives a return on its invested capital at pre-established thresholds, subject to the employee's continued service through the receipt of such return. While our initial public offering would not itself constitute an event that would trigger vesting, subsequent sales by Blackstone of our common stock could result in the vesting of such options. As a result, the retention incentives associated with these options could lapse for all employees holding these options under our 2013 Omnibus Incentive Plan at the same time or times. This decrease in retention incentive could cause significant turnover after these options vest. We may be unable to replace key members of our management team and key employees if we lose their services. Integrating new employees into our team could prove disruptive to our operations, require substantial resources and management attention and ultimately prove unsuccessful. An inability to attract and retain sufficient managerial personnel who have critical industry experience and relationships could limit or delay our strategic efforts, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

***The execution of our business plan and development strategy may be seriously harmed if integration of our senior management team is not successful.***

Since August 2013, we have experienced and we may continue to experience significant changes in our senior management team. Specifically, eight members of our senior management team, including our chief executive officer and chief financial officer, have joined us since August 2013 and only one member of our senior management team has prior experience in the distributed solar energy industry. This lack of long-term experience working together and limited experience in the distributed solar energy industry may adversely impact our senior management team's ability to effectively manage our business and accurately forecast our results, including revenue from our distributed solar energy systems and sales.

***The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain qualified board members and officers.***

As a public company, we are subject to the reporting requirements of the Exchange Act, the listing requirements of the New York Stock Exchange, or NYSE, and other applicable securities rules and regulations. Compliance with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and operating results and maintain effective disclosure controls and procedures and internal control over financial reporting. To maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns which could harm our business and operating results. Although we have already hired additional employees to comply with these requirements, we may need to hire more employees in the future which will increase our costs and expenses. Moreover, our independent registered public accounting firm identified a material weakness in our internal control over financial reporting in connection with the preparation, audits and interim reviews of our consolidated financial statements, and if we fail to remediate this material weakness or, in the future, we or our independent registered public accounting

firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources.

We also expect that being a public company will make it more expensive for us to obtain director and officer liability insurance and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified executive officers and members of our board of directors, particularly to serve on our audit committee and compensation committee.

***We may be subject to intellectual property rights claims by third parties, which are extremely costly to defend, could require us to pay significant damages and could limit our ability to use certain technologies.***

Third parties, including our competitors, may own patents or other intellectual property rights that cover aspects of our technology or business methods. Such parties may claim we have misappropriated, misused, violated or infringed third party intellectual property rights, and, if we gain greater recognition in the market, we face a higher risk of being the subject of claims that we have violated others' intellectual property rights. Any claim that we violate a third party's intellectual property rights, whether with or without merit, could be time-consuming, expensive to settle or litigate and could divert our management's attention and other resources. If we do not successfully settle or defend an intellectual property claim, we could be liable for significant monetary damages and could be prohibited from continuing to use certain technology, business methods, content or brands. To avoid a prohibition, we could seek a license from third parties, which could require us to pay significant royalties, increasing our operating expenses. If a license is not available at all or not available on reasonable terms, we may be required to develop or license a non-violating alternative, either of which could require significant effort and expense. If we cannot license or develop a non-violating alternative, we would be forced to limit or stop sales of our offerings and may be unable to effectively compete. Any of these results would adversely affect our business, results of operations, financial condition and cash flows. To deter other companies from making intellectual property claims against us or to gain leverage in settlement negotiations, we may be forced to significantly increase the size of our intellectual property portfolio through internal efforts and acquisitions from third parties, both of which could require significant expenditures. However, a robust intellectual property portfolio may provide little or no deterrence, particularly for patent holding companies or other patent owners that have no relevant product revenues.

***We use "open source" software in our solutions, which may restrict how we distribute our offerings, require that we release the source code of certain software subject to open source licenses or subject us to possible litigation or other actions that could adversely affect our business.***

We currently use in our solutions, and expect to continue to use in the future, software that is licensed under so-called "open source," "free" or other similar licenses. Open source software is made available to the general public on an "as-is" basis under the terms of a non-negotiable license. We currently combine our proprietary software with open source software but not in a manner that we believe requires the release of the source code of our proprietary software to the public. We do not plan to integrate our proprietary software with open source software in ways that would require the release of the source code of our proprietary software to the public, however, our use and distribution of open source software may entail greater risks than use of third-party commercial software. Open source licensors generally do not provide warranties or other contractual protections regarding infringement claims or the quality of the code. In addition, if we combine our proprietary software with open source software in a certain manner, we could, under certain open source licenses, be required to release the source code of our proprietary software to the public. This would allow our competitors to create similar offerings with lower development effort and time and ultimately could result in a loss of sales. We may also face claims alleging noncompliance with open source license terms or infringement or misappropriation of proprietary software. These claims could result in litigation, require us to purchase a costly license or require us to devote additional research and development resources to change our software, any of which would have a negative effect on our business and operating results. In addition, if the license terms for open source software that we use change, we may be forced to re-engineer our solutions, incur additional costs or discontinue the sale of our offerings if re-engineering could not be accomplished on a timely basis. Although we monitor our use of open source software to avoid subjecting our offerings to unintended conditions, few courts have interpreted open source licenses, and there is a risk that these licenses could be construed in a way that could impose unanticipated conditions or restrictions on our ability to commercialize our offerings. We cannot guarantee that we have incorporated open source software in our software in a manner that will not subject us to liability, or in a manner that is consistent with our current policies and procedures.

***The installation and operation of solar energy systems depends heavily on suitable solar and meteorological conditions. If meteorological conditions are unexpectedly unfavorable, the electricity production from our solar energy systems may be substantially below our expectations and our ability to timely deploy new systems may be adversely impacted.***

The energy produced and revenue and cash receipts generated by a solar energy system depend on suitable solar, atmospheric and weather conditions, all of which are beyond our control. Furthermore, components of our systems, such as panels and inverters, could be damaged by severe weather, such as hailstorms or lightning. Although we maintain insurance to cover for many such casualty events, our investment funds would be obligated to bear the expense of repairing the damaged solar energy systems, sometimes subject to limitations based on our ability to successfully make warranty claims. Our economic model and projected returns on our systems require us to achieve certain production results from our systems and, in some cases, we guarantee these results for both our consumers and our investors. If the systems underperform for any reason, our financial results could suffer. Sustained unfavorable weather also could delay our installation of solar energy systems, leading to increased expenses and decreased revenue and cash receipts in the relevant periods. We have experienced seasonal fluctuations in our operations. For example, the amount of revenue we recognize in a given period from power purchase agreements is dependent in part on the amount of energy generated by solar energy systems under such contracts. As a result, operating leases and incentives revenue is impacted by seasonally shorter daylight hours in winter months. In addition, our ability to install solar energy systems is impacted by weather. For example, we have limited ability to install solar energy systems during the winter months in the Northeastern United States. Such delays can impact the timing of when we can install and begin to generate revenue from solar energy systems. However, given that we are an early stage company operating in a rapidly growing industry, the true extent of these fluctuations may have been masked by our recent growth rates and thus may not be readily apparent from our historical operating results and may be difficult to predict. As such, our historical operating results may not be indicative of future performance. Furthermore, weather patterns could change, making it harder to predict the average annual amount of sunlight striking each location where we install a solar energy system. This could make our solar energy systems less economical overall or make individual systems less economical. Any of these events or conditions could harm our business, financial condition, results of operations and prospects.

***Disruptions to our solar monitoring systems could negatively impact our revenues and increase our expenses.***

Our ability to accurately charge our customers for the energy produced by our solar energy systems depends on customers maintaining a broadband internet connection so that we may receive data regarding solar energy systems production from their home networks. We could incur significant expenses or disruptions of our operations in connection with failures of our solar monitoring systems, including failures of our customers' home networks that would prevent us from accurately monitoring solar energy production. In addition, sophisticated hardware and operating system software and applications that we procure from third parties may contain defects in design or manufacture, including "bugs" and other problems that could unexpectedly interfere with the operation of our systems. The costs to us to eliminate or alleviate viruses and bugs, or any problems associated with failures of our customers' home networks could be significant, and the efforts to address these problems could result in interruptions, delays or cessation of service that may impede our sales, distribution or other critical functions. We have in the past experienced periods where some of our customers' networks have been unavailable and, as a result, we have been forced to estimate the production of their solar energy systems. Such estimates may prove inaccurate and could cause us to underestimate the power being generated by our solar energy systems and undercharge our customers, thereby harming our results of operations.

***We are exposed to the credit risk of our customers.***

Our solar energy customers purchase energy or lease solar energy systems from us pursuant to one of two types of long-term contracts: a power purchase agreement or a lease. The power purchase agreement and lease terms are typically for 20 years, and require the customer to make monthly payments to us. Accordingly, we are subject to the credit risk of our customers. As of September 30, 2014, the average FICO score of our customers was approximately 750. As of September 30, 2014, customer defaults, in the aggregate, have been immaterial; however, we expect that the risk of customer defaults will increase as we grow our business. As a result, our reserve for this exposure is estimated to be \$0.4 million, and our future exposure may exceed the amount of such reserves.

***The Office of the Inspector General of the U.S. Department of Treasury has issued subpoenas to a number of significant participants in the rooftop solar energy installation industry and may take further action based on this ongoing investigation or for other reasons.***

In July 2012, other companies that are significant participants in both the solar industry and the U.S. Treasury grant program received subpoenas from the U.S. Department of Treasury's Office of the Inspector General to deliver certain documents in their possession related to their applications for U.S. Treasury grants and communications with certain other solar development companies or certain firms that appraise solar energy property for U.S. Treasury grant application purposes. The Inspector General is working with the Civil Division of the U.S. Department of Justice to investigate the administration and implementation of the U.S. Treasury

grant program, including possible misrepresentations concerning the fair market value of the solar power systems submitted in grant applications by companies in the solar industry. While we have not been a direct target of this investigation to date, given our participation in the U.S. Treasury grant program, the Inspector General or the Department of Justice could broaden the investigation to include us. If it were broadened to include us, the period of time necessary to resolve the investigation would be uncertain, and the matter could require significant management and financial resources that could otherwise be devoted to the operation of our business. The Department of Justice could also decide to bring a civil action to recover amounts it believes were improperly paid to us. If it were successful in asserting this action, it could have a material adverse effect on our business, liquidity, financial condition and prospects.

***A failure to comply with laws and regulations relating to our interactions with current or prospective residential customers could result in negative publicity, claims, investigations, and litigation, and adversely affect our financial performance.***

Our business substantially focuses on contracts and transactions with residential customers. We must comply with numerous federal, state and local laws and regulations that govern matters relating to our interactions with residential consumers, including those pertaining to privacy and data security, consumer financial and credit transactions, home improvement contracts, warranties, and door-to-door solicitation. These laws and regulations are dynamic and subject to potentially differing interpretations, and various federal, state and local legislative and regulatory bodies may expand current laws or regulations, or enact new laws and regulations, regarding these matters. Changes in these laws or regulations or their interpretation could dramatically affect how we do business, acquire customers, and manage and use information we collect from and about current and prospective customers and the costs associated therewith. We strive to comply with all applicable laws and regulations relating to our interactions with residential customers. It is possible, however, that these requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. Our non-compliance with any such law or regulations could also expose the company to claims, proceedings, litigation and investigations by private parties and regulatory authorities, as well as substantial fines and negative publicity, each of which may materially and adversely affect our business. We have incurred, and will continue to incur, significant expenses to comply with such laws and regulations, and increased regulation of matters relating to our interactions with residential consumers could require us to modify our operations and incur significant additional expenses, which could have an adverse effect on our business, financial condition and results of operations.

***Any unauthorized access to, or disclosure or theft of personal information we gather, store or use could harm our reputation and subject us to claims or litigation.***

We receive, store and use personal information of our customers, including names, addresses, e-mail addresses, credit information and other housing and energy use information. We also store and use personal information of our employees. In addition, we currently utilize certain shared information and technology systems with Vivint. We take certain steps in an effort to protect the security, integrity and confidentiality of the personal information we collect, store or transmit, but there is no guarantee that inadvertent or unauthorized use or disclosure will not occur or that third parties will not gain unauthorized access to this information despite our efforts. Because techniques used to obtain unauthorized access or sabotage systems change frequently and generally are not identified until they are launched against a target, we and our suppliers or vendors, including Vivint, may be unable to anticipate these techniques or to implement adequate preventative or mitigation measures.

Unauthorized use or disclosure of, or access to, any personal information maintained by us or on our behalf, whether through breach of our systems, breach of the systems of our suppliers or vendors, including Vivint, by an unauthorized party, or through employee or contractor error, theft or misuse, or otherwise, could harm our business. If any such unauthorized use or disclosure of, or access to, such personal information were to occur, our operations could be seriously disrupted and we could be subject to demands, claims and litigation by private parties, and investigations, related actions, and penalties by regulatory authorities. In addition, we could incur significant costs in notifying affected persons and entities and otherwise complying with the multitude of federal, state and local laws and regulations relating to the unauthorized access to, or use or disclosure of, personal information. Finally, any perceived or actual unauthorized access to, or use or disclosure of, such information could harm our reputation, substantially impair our ability to attract and retain customers and have an adverse impact on our business, financial condition and results of operations.

***We are involved, and may become involved in the future, in legal proceedings that, if adversely adjudicated or settled, could adversely affect our financial results.***

We are, and may in the future become, party to litigation. For example, in December 2013 one of our former sales representatives filed a class-action lawsuit on behalf of himself and all similarly situated plaintiffs against us in the Superior Court of the State of California, County of San Diego. This action alleges certain violations of the California Labor Code and the California Business and Professions Code based on, among other things, alleged improper classification of sales representatives and sales managers, failure to pay overtime compensation, failure to provide meal periods, failure to provide accurate itemized wage statements,

failure to pay wages on termination and failure to reimburse expenses. The complaint seeks unspecified damages including penalties and attorneys' fees in addition to wages and overtime. On or about January 24, 2014, we filed an answer denying the allegations in the complaint and asserting various affirmative defenses. In addition, on or about September 16, 2014, two of our former installation technicians, on behalf of themselves and individuals the plaintiffs claim to be similarly situated, filed a purported class action complaint in the Superior Court of the State of California, County of San Diego. Similar to the above complaint, this action alleges certain violations of the California Labor Code and the California Business and Professions Code based on, among other things, alleged improper classification of installer technicians, installer helpers, electrician technicians and electrician helpers, failure to pay minimum and overtime wages, failure to provide accurate itemized wage statements, and failure to provide wages on termination. While we intend to defend against these actions vigorously, the ultimate outcomes of these cases are presently not determinable as they are in a preliminary phase. We may become party to similar types of disputes in other jurisdictions. In general, litigation claims can be expensive and time consuming to bring or defend against and could result in settlements or damages that could significantly affect financial results and the conduct of our business. It is not possible to predict the final resolution of the litigation to which we currently are or may in the future become party, and the impact of certain of these matters on our business, prospects, financial condition, liquidity, results of operations and cash flows.

### **Risks Related to our Relationship with Vivint**

*Vivint provides us with certain key services for our business. If Vivint fails to perform its obligations to us or if we do not find appropriate replacement services, we may be unable to perform these services or implement substitute arrangements on a timely and cost-effective basis on terms favorable to us.*

We have historically relied on the technical, administrative and operational support of Vivint to run our business. Some of the Vivint resources we are using include information and technology resources and systems, purchasing services, operational and fleet services and marketing services. In addition, historically we have recruited a majority of our sales personnel from Vivint. We are in the process of separating our operations from those of Vivint and either creating our own financial, administrative, operational and other support systems or contracting with third parties to replace Vivint's systems and services that will not be provided to us under the terms of the transition services agreement between us and Vivint described in the section of the Prospectus captioned "Certain Relationships and Related Party Transactions—Agreements with Vivint—Expected Agreements with Vivint—Transition Services Agreement." The implementation of new software support systems requires significant management time, support and cost, and there are inherent risks associated with implementing, developing, improving and expanding our core systems. We cannot be sure that these systems will be fully or effectively implemented on a timely basis, if at all. If we do not successfully implement these systems, our operations may be disrupted and our operating results could be harmed. In addition, the new systems may not operate as we expect them to, and we may be required to expend significant resources to correct problems or find alternative sources for performing these functions.

In order to successfully transition to our own systems, services and service providers and operate as a stand-alone business, we have entered into various agreements with Vivint in connection with our public offering. See the section of the Prospectus captioned "Certain Relationships and Related Party Transactions—Agreements with Vivint—Expected Agreements with Vivint." These include a master framework agreement providing the overall terms of the relationship and a transition services agreement detailing various information technology and back office support services that Vivint will provide. Vivint will provide each service until we agree that support from Vivint is no longer required for that service. The services provided under the transition services agreement may not be sufficient to meet our needs and we may not be able to replace these services at favorable costs and on favorable terms, if at all. Any failure or significant downtime in our own financial or administrative systems or in Vivint's financial or administrative systems during the transition period and any difficulty in separating our operations from Vivint's operations and integrating newly developed or acquired services into our business could result in unexpected costs, impact our results or prevent us from paying our suppliers and employees and performing other technical, administrative and operations services on a timely basis and could materially harm our business, financial condition, results of operations and cash flows.

*Our historical financial information may not be representative of future results as a stand-alone public company.*

The historical financial information we have included in this report does not necessarily reflect what our financial position, results of operations or cash flows would have been had we operated separately from Vivint during the historical periods presented. The historical costs and expenses reflected in our consolidated financial statements include charges to certain corporate functions historically provided to us by Vivint. We and Vivint believe these charges are reasonable reflections of the historical utilization levels of these services in support of our business; however, these charges may not include all of the expenses that would have been incurred had we operated separately from Vivint during the historical periods presented. As a result, our historical financial information is not necessarily indicative of our future results of operations, financial position, cash flows or costs and expenses.

***Our inability to resolve any disputes that arise between us and Vivint with respect to our past and ongoing relationships may adversely affect our financial results, and such disputes may also result in claims for indemnification.***

Disputes may arise between Vivint and us in a number of areas relating to our past and ongoing relationships, including the following:

- intellectual property, labor, tax, employee benefits, indemnification and other matters arising from our separation from Vivint;
- employee retention and recruiting;
- our ability to use, modify and enhance the intellectual property that we have licensed from Vivint;
- business combinations involving us;
- pricing for shared and transitional services;
- exclusivity arrangements;
- the nature, quality and pricing of products and services Vivint agrees to provide to us; and
- business opportunities that may be attractive to both Vivint and us.

We have entered into certain agreements with Vivint as set forth in the section of the Prospectus Captioned “Certain Relationships and Related Party Transactions – Agreements with Vivint.” Pursuant to the terms of the Non-Competition Agreement we have entered into with Vivint, we and Vivint each define our areas of business and our competitors, and agree not to directly or indirectly engage in the other’s business for three years. Such agreement may limit our ability to pursue attractive opportunities that we may have otherwise pursued.

Additionally, such agreement prohibits, for a period of five years, either Vivint or us from soliciting for employment any member of the other’s executive or senior management team, or any of the other’s employees who primarily manage sales, installation or services of the other’s products and services. The commitment not to solicit those employees lasts for 180 days after such employee finishes employment with us or Vivint. Historically we have recruited a majority of our sales personnel from Vivint. This agreement may require us to obtain personnel from other sources, and may limit our ability to continue scaling our business if we are unable to do so.

Pursuant to the terms of the Marketing and Customer Relations Agreement we have entered into with Vivint, we and Vivint are required to compensate one another for sales leads that result in sales. Vivint may direct sales leads to other solar companies in markets in which we have not entered. However, once we enter a market, Vivint must exclusively direct to us all leads for customers and potential customers with an interest in solar. Vivint’s ability to sell leads to other solar providers in markets where we are not currently operating may adversely affect our ability to scale rapidly if we subsequently enter into such market as many of Vivint’s customers with solar inclinations may have already been referred to another solar company by the time we enter into such market.

We may not be able to resolve any potential conflicts relating to these agreements or otherwise, and even if we do, the resolution may be less favorable than if we were dealing with an unaffiliated party. In addition, we will have indemnification obligations under the intercompany services agreements we will enter into with Vivint, and disputes between us and Vivint may result in claims for indemnification. However, we do not currently expect that these indemnification obligations will materially affect our potential liability compared to what it would be if we did not enter into these agreements with Vivint.

#### **Risks Related to Our Common Stock**

***The price of our common stock may be volatile, and the value of your investment could decline.***

The trading price of our common stock may be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. These factors include:

- changes in laws or regulations applicable to our industry or offerings;
- additions or departures of key personnel;
- the failure of securities analysts to cover our common stock;
- actual or anticipated changes in expectations regarding our performance by investors or securities analysts;
- price and volume fluctuations in the overall stock market;
- volatility in the market price and trading volume of companies in our industry or companies that investors consider comparable;

- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- our ability to protect our intellectual property and other proprietary rights;
- sales of our common stock by us or our stockholders;
- the expiration of contractual lock-up agreements;
- litigation or disputes involving us, our industry or both;
- major catastrophic events; and
- general economic and market conditions.

Further, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. In addition, the stock prices of many renewable energy companies have experienced wide fluctuations that have often been unrelated to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions such as recessions, interest rate changes or international currency fluctuations, may cause the market price of our common stock to decline. If the market price of our common stock does not exceed the initial public offering price, you may not realize any return on your investment and may lose some or all of your investment.

In the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

***As an emerging growth company within the meaning of the Securities Act, we will utilize certain modified disclosure requirements, and we cannot be certain if these reduced requirements will make our common stock less attractive to investors.***

We are an emerging growth company, and, for as long as we continue to be an emerging growth company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies but not to "emerging growth companies" including, but not limited to, not being required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We have utilized, and we plan in future filings with the SEC to continue to utilize, the modified disclosure requirements available to emerging growth companies. As a result, our stockholders may not have access to certain information they may deem important.

In addition, Section 107 of the JOBS Act also provides that an emerging growth company can utilize the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not "emerging growth companies."

We could remain an "emerging growth company" for up to five years, or until the earliest of (1) the last day of the first fiscal year in which our annual gross revenue exceeds \$1 billion, (2) the date that we become a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the last business day of our most recently completed second fiscal quarter or (3) the date on which we have issued more than \$1 billion in non-convertible debt during the preceding three-year period.

***Our stock price could decline due to the large number of outstanding shares of our common stock eligible for future sale.***

Sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could cause the market price of our common stock to decline. These sales could also make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem appropriate.

As of September 30, 2014, we had 84,703,122 outstanding shares of common stock based on the number of shares outstanding. We, 313 Acquisition LLC and all of our directors and officers, as well as the other holders of substantially all shares of our common stock outstanding immediately prior to the completion of our initial public offering, agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their common stock until 180 days following the date of such offering, except with the prior written consent of the representatives of the underwriters. After the expiration of the 180 day restricted period, these shares may be sold in the public market in the United States, subject to prior registration in the United States, if required, or reliance upon an exemption from U.S. registration, including, in the case of shares held by affiliates or control persons, compliance with the volume

restrictions of Rule 144. Participants in the reserved share program, which provided for the sale of up to 5% of the shares offered in our initial public offering, have agreed to similar restrictions for 180 days following the date of such offering, which restrictions may be waived with the prior written consent of the representatives of the underwriters.

In addition, 676,467 shares reserved for future issuance under our Long-Term Incentive Plan will issue, vest and be immediately tradable without restriction on the date that is six months after the closing of our initial public offering. An additional 2,705,889 shares reserved for future issuance under our Long-Term Incentive Plan will issue, vest and be immediately tradable without restriction at the later of (1) the date our sponsor and its affiliates achieve a specified return on their invested capital and (2) the date that is six months after the closing of the offering. On the date that is 18 months after the closing of our initial public offering, 676,467 shares reserved for future issuance under our Long-Term Incentive Plan will issue, vest and be immediately tradable without restriction. For more information regarding the shares reserved under our Long Term Incentive Plan see the section of the Prospectus captioned "Shares Eligible for Future Sale."

Further, options to purchase 10,057,738 shares remained outstanding as of September 30, 2014, one-third of which are subject to ratable time-based vesting over a five year period and will become immediately tradable once vested. The remaining two-thirds are subject to vesting upon certain performance conditions and the achievement of certain investment return thresholds by 313 Acquisition LLC and will vest and become immediately tradable as follows: (1) one-half of the shares vest (a) if 313 Acquisition LLC receives cash proceeds with respect to its holdings of our common stock in an amount that equals \$250 million more than its cumulative investment in our common stock (which amount shall be equal to \$75 million plus any amounts invested after November 16, 2012) or (b) if 240 days after the completion of our initial public offering, our aggregate equity market capitalization exceeds \$1 billion and (2) one-half of the shares vest when 313 Acquisition LLC receives cash proceeds with respect to its holdings of our common stock in an amount that equals \$500 million more than its cumulative investment in our common stock (which amount shall be equal to \$75 million plus any amounts invested after November 16, 2012).

Following the date that is 180 days after the completion of our initial public offering, stockholders owning an aggregate of 84,703,122 shares will be entitled, under contracts providing for registration rights, to require us to register shares of our common stock owned by them for public sale in the United States, subject to the restrictions of Rule 144. On October 1, 2014, we filed a registration statement on Form S-8 to register 22,904,561 shares previously issued or reserved for future issuance under our equity compensation plans and agreements. Upon effectiveness of this registration statement, subject to the satisfaction of applicable exercise periods and, in certain cases, lock-up agreements with the representatives of the underwriters referred to above, the shares of common stock issued upon exercise of outstanding options will be available for immediate resale in the United States in the open market. Sales of our common stock as restrictions end or pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause our stock price to fall and make it more difficult for you to sell shares of our common stock.

***Our sponsor and its affiliates control us and their interests may conflict with ours or yours in the future.***

As of September 30, 2014, 313 Acquisition LLC, which is controlled by our sponsor and its affiliates, beneficially owned approximately 78% of our common stock. Moreover, under our organizational documents and the stockholders agreement with 313 Acquisition LLC, for so long as our existing owners and their affiliates retain significant ownership of us, we will agree to nominate to our board individuals designated by our sponsor, whom we refer to as the sponsor directors. In addition, for so long as 313 Acquisition LLC continues to own shares representing a majority of the total voting power, we will agree to nominate to our board individuals appointed by Summit Partners and Todd Pedersen. Even when our sponsor and its affiliates and certain of its co-investors cease to own shares of our stock representing a majority of the total voting power, for so long as our sponsor and its affiliates continue to own a significant percentage of our stock our sponsor will still be able to significantly influence the composition of our board of directors and the approval of actions requiring stockholder approval. In addition, under the stockholders agreement, affiliates of our sponsor will have consent rights with respect to certain actions involving our company, provided a certain aggregate ownership threshold is maintained collectively by our sponsor and its affiliates, together with Summit Partners, Todd Pedersen and Alex Dunn and their respective affiliates. Accordingly, for such period of time, our sponsor and certain of its co-investors will have significant influence with respect to our management, business plans and policies, including the appointment and removal of our officers. In particular, for so long as our sponsor and its affiliates continue to own a significant percentage of our stock, our sponsor will be able to cause or prevent a change of control of our company or a change in the composition of our board of directors and could preclude any unsolicited acquisition of our company. The concentration of ownership could deprive you of an opportunity to receive a premium for your shares of common stock as part of a sale of our company and ultimately might affect the market price of our common stock.

Our sponsor and its affiliates engage in a broad spectrum of activities, including investments in the energy sector. In the ordinary course of their business activities, our sponsor and its affiliates may from time to time acquire and hold interests in businesses that compete directly or indirectly with us. For example, affiliates of our sponsor regularly invest in utility companies that compete with solar energy and renewable energy companies such as ours. In addition, affiliates of our sponsor own interests in one of the largest solar power developers in India and may in the future make other investments in solar power, including in the United States.

Our certificate of incorporation will provide that none of our sponsor, any of its affiliates or any director who is not employed by us (including any non-employee director who serves as one of our officers in both his or her director and officer capacities) or his or her affiliates will have any duty to refrain from engaging, directly or indirectly, in the same business activities or similar business activities or lines of business in which we operate. Our sponsor also may pursue acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us. In addition, our sponsor may have an interest in pursuing acquisitions, divestitures and other transactions that, in its judgment, could enhance its investment, even though such transactions might involve risks to you.

***We have elected to take advantage of the “controlled company” exemption to the corporate governance rules for NYSE-listed companies, which could make our common stock less attractive to some investors or otherwise harm our stock price.***

Because we qualify as a “controlled company” under the corporate governance rules for NYSE-listed companies, we are not required to have a majority of our board of directors be independent, nor are we required to have a compensation committee or an independent nominating function. In light of our status as a controlled company, in the future we could elect not to have a majority of our board of directors be independent or not to have a compensation committee or nominating and governance committee. Accordingly, should the interests of 313 Acquisition LLC or our sponsor differ from those of other stockholders, the other stockholders may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance rules for NYSE-listed companies. Our status as a controlled company could make our common stock less attractive to some investors or otherwise harm our stock price.

***Our management will have broad discretion over the use of the proceeds from our initial public offering and may not apply those proceeds in ways that increase the value of your investment.***

Our management has broad discretion to use the net proceeds we received from our initial public offering and you will be relying on its judgment regarding the application of these proceeds. We expect to use the net proceeds from the offering as described under the section of our Prospectus captioned “Use of Proceeds.” However, management may not apply the net proceeds of our initial offering in ways that increase the value of your investment.

***Provisions in our certificate of incorporation, bylaws, stockholders agreement and under Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, therefore, depress the trading price of our common stock.***

Our certificate of incorporation, bylaws and stockholders agreement contain provisions that could depress the trading price of our common stock by discouraging, delaying or preventing a change of control of our company or changes in our management that the stockholders of our company may believe advantageous. These provisions include:

- establishing a classified board of directors so that not all members of our board of directors are elected at one time;
- authorizing “blank check” preferred stock that our board of directors could issue to increase the number of outstanding shares to discourage a takeover attempt;
- limiting the ability of stockholders to call a special stockholder meeting;
- limiting the ability of stockholders to act by written consent;
- providing that the board of directors is expressly authorized to make, alter or repeal our bylaws;
- establishing advance notice requirements for nominations for elections to our board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings;
- requiring our sponsor to consent to certain actions, as described under the section of the Prospectus captioned “Certain Relationships and Related Party Transactions—Agreements with Our Sponsor—Stockholders Agreement,” for so long as our sponsor, Summit Partners, Todd Pedersen and Alex Dunn or their respective affiliates collectively own, in the aggregate, at least 30% of our outstanding shares of common stock;
- the removal of directors only for cause and only upon the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class, if Blackstone and its affiliates beneficially own, in the aggregate, less than 30% in voting power of the stock of our Company entitled to vote generally in the election of directors; and
- that certain provisions may be amended only by the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of our Company entitled to vote thereon, voting together as a single class, if Blackstone and its affiliates beneficially own, in the aggregate, less than 30% in voting power of the stock of our company entitled to vote generally in the election of directors.

***If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who do now, or may in the future, cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

## **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

### ***(a) Sales of Unregistered Securities***

The following list sets forth information regarding all unregistered securities sold by us during the three months ended September 30, 2014. No underwriters were involved in the sales and the certificates representing the securities sold and issued contain legends restricting transfer of the securities without registration under the Securities Act or an applicable exemption from registration.

- (1) From July 1, 2014 through September 30, 2014, we granted to certain employees and executives under our 2013 Omnibus Incentive Plan options to purchase an aggregate of 332,000 shares of our common stock at exercise prices ranging from \$4.14 to \$16.00 per share.
- (2) In August and September 2014, we issued and sold 7,359,374 shares of our common stock to 313 Acquisition LLC at a price of \$10.667 per share for aggregate gross proceeds of approximately \$78.5 million.
- (3) In September 2014, we issued and sold 2,343,748 shares of our common stock to two of our directors at a price of \$10.667 per share for aggregate gross proceeds of approximately \$25 million.

The offers, sales and issuances of the securities described in Items (2) and (3) were exempt from registration under the Securities Act under Section 4(2) of the Securities Act or Regulation D promulgated thereunder as transactions by an issuer not involving a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was an accredited investor and had adequate access, through employment, business or other relationships, to information about the registrant.

The offers, sales and issuances of the securities described in Item (1) were exempt from registration under the Securities Act under Rule 701 in that the transactions were made pursuant to compensatory benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of such securities were the registrant's employees, consultants or directors and received the securities under the registrant's 2013 Omnibus Incentive Plan or the 2013 Long-term Incentive Plan. The recipients of securities in each of these transactions represented their intention to acquire the securities for investment only and not with view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions.

### ***(b) Use of Proceeds***

On September 30, 2014, our registration statement on Form S-1 (No. 333-198372) was declared effective for our initial public offering and on October 6, 2014, we consummated the initial public offering consisting of 20,600,000 shares of our common stock at a public offering price of \$16.00 per share. The lead underwriters in the offering were Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Credit Suisse Securities (USA) LLC. Following the sale of the shares in connection with the closing of the initial public offering, the offering terminated. As a result of the offering, we received total net proceeds of approximately \$300.8 million, after deducting total expenses of \$28.8 million, consisting of underwriting discounts and commissions of \$20.2 million and offering related expenses of approximately \$8.6 million. No payments for such expenses were made directly or indirectly to (i) any of our officers or directors or their associates, (ii) any persons owning 10% or more of any class of our equity securities, or (iii) any of our affiliates.

We maintain the funds received in cash and cash equivalents. Our principal uses of these proceeds will be to fund our operations, including the costs of acquisition and installation of solar energy systems and other working capital requirements.

## Item 6. Exhibits

- 3.1 Amended and Restated Certificate of Incorporation of the Company
- 3.2 Amended and Restated Bylaws of the Company
- 10.1 Master Intercompany Framework Agreement between the Company and Vivint, Inc., dated September 30, 2014
- 10.2 Transition Services Agreement between the Company and Vivint, Inc., September 30, 2014
- 10.3 Non-Competition Agreement between the Company and Vivint, Inc., dated September 30, 2014
- 10.4 Product Development and Supply Agreement between Vivint Solar Developer, LLC and Vivint, Inc., dated September 30, 2014
- 10.5 Marketing and Customer Relations Agreement between Vivint Solar Developer, LLC and Vivint, Inc., dated September 30, 2014
- 10.6 Trademark Assignment Agreement between Vivint Solar Licensing LLC and Vivint, Inc., dated September 30, 2014
- 10.7 Trademark Assignment Agreement between the Company and Vivint, Inc., dated September 30, 2014
- 10.8 Termination Agreement (Turnkey Full-Service Sublease Agreement) between Vivint Solar Holdings, Inc., and Vivint, Inc., dated September 30, 2014
- 10.9 Bill of Sale and Assignment between the Company and Vivint, Inc., dated September 30, 2014
- 10.10 Limited Liability Company Agreement of Vivint Solar Licensing, LLC, between the Company and Vivint, Inc., dated September 30, 2014
- 10.11 Trademark License Agreement between the Company and Vivint Solar Licensing, LLC, dated September 30, 2014
- 10.12\* Loan Agreement, among Vivint Solar Financing I, LLC, Bank of America, N.A. and the parties named therein, dated as of September 12, 2014
- 10.13\* Collateral Agency and Depository Agreement among Vivint Solar Financing I, LLC, Bank of America, N.A. and the parties named therein, dated as of September 12, 2014
- 10.14\* Pledge and Security Agreement among Vivint Solar Financing I, LLC, Bank of America, N.A. and the parties named therein, dated as of September 12, 2014
- 10.15 Form of Notice of Stock Option Grant and Stock Option Agreement under the 2014 Equity Incentive Plan
- 10.16 Form of Notice of Restricted Stock Unit Grant and Restricted Stock Unit Agreement under the 2014 Equity Incentive Plan
- 10.17 Form of Stock Option Agreement under the 2013 Omnibus Incentive Plan
- 31.1\*\* Certification of Chief Executive Officer, pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002
- 31.2\*\* Certification of Chief Financial Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002
- 32.1\*\* Certification of Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 32.2\*\* Certification of Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 101.INS† XBRL Instance Document
- 101.SCH† XBRL Taxonomy Extension Schema Document
- 101.CAL† XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF† XBRL Taxonomy Extension Definition Linkbase Document
- 101.LAB† XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE† XBRL Taxonomy Extension Presentation Linkbase Document
- \* Incorporated by reference to the referenced exhibit to the Company's Amendment No. 1 to Form S-1 Registration Statement, filed September 18, 2014
- \*\* The Certifications attached as Exhibits 32.1 and 32.2 that accompany this Quarterly Report on Form 10-Q are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Vivint Solar, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Form 10-Q, irrespective of any general incorporation language contained in such filing.
- † To be filed by amendment.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

VIVINT SOLAR, INC.

Date: November 12, 2014

/s/ GREGORY S. BUTTERFIELD  
Gregory S. Butterfield  
Chief Executive Officer and President  
*(Principal Executive Officer)*

Date: November 12, 2014

/s/ DANA C. RUSSELL  
Dana C. Russell  
Chief Financial Officer and Executive Vice President  
*(Principal Financial Officer)*

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION OF**  
**VIVINT SOLAR, INC.**

Vivint Solar, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), certifies that:

- A. The name of the Corporation is Vivint Solar, Inc.
  - B. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 12, 2011 under the name of “V Solar Holdings, Inc.”
  - C. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware and by written consent of the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Corporation’s Certificate of Incorporation, as amended.
  - D. The text of the Corporation’s Certificate of Incorporation, as amended and restated, is hereby amended, integrated and restated to read in its entirety as set forth in EXHIBIT A attached hereto.
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IN WITNESS WHEREOF, Vivint Solar, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Gregory Butterfield, a duly authorized officer of the Corporation, on October 3, 2014.

/s/ Gregory Butterfield

Gregory Butterfield, President and CEO

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**EXHIBIT A**

**ARTICLE I**

The name of the Corporation is Vivint Solar, Inc.

**ARTICLE II**

The purpose of this Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “**DGCL**”).

**ARTICLE III**

The address of the Corporation’s registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE IV**

4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 1,010,000,000 shares, consisting of 1,000,000,000 shares of Common Stock, having a par value of \$0.01 per share (the “**Common Stock**”), and 10,000,000 shares of Preferred Stock, having a par value of \$0.01 per share (the “**Preferred Stock**”).

4.2 Increase or Decrease in Authorized Capital Stock. The number of authorized shares of Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote generally in the election of directors, irrespective of the provisions of Section 242 (b)(2) of the DGCL (or any successor provision thereto), voting together as a single class, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote by any holders of one or more series of Preferred Stock is required by the express terms of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Section 4.4 of this Article IV.

4.3 Common Stock.

(a) The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of shares of Common Stock are entitled to vote. Except as otherwise required by law or this amended and restated certificate of incorporation (this “**Certificate of Incorporation**” which term, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock), and subject to the rights of the holders of Preferred Stock, at any annual or special meeting of the stockholders the holders of shares of Common Stock shall have the right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation that

relates solely to the terms, number of shares, powers, designations, preferences, or relative participating, optional or other special rights (including, without limitation, voting rights), or to qualifications, limitations or restrictions thereon, of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one more other such series, to vote thereon pursuant to this Certificate of Incorporation (including, without limitation, by any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the board of directors of the Corporation (the “**Board**”) from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

#### 4.4 Preferred Stock .

(a) The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board (authority to do so being hereby expressly vested in the Board). The Board is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions and to set forth in a certification of designations filed pursuant to the DGCL the powers, designations, preferences and relative, participation, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, of any wholly unissued series of Preferred Stock, including without limitation authority to fix by resolution or resolutions the designation of the series, the number of shares of the series, whether dividends, if any, will be cumulative or non-cumulative and dividend rate of the series, the dates at which dividends, if any, will be payable, the redemption rights and price or prices, if any, for shares of the series, the terms and amounts of any sinking fund provided for the purchase or redemption of shares of the series, the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Corporation, whether the shares of the series will be convertible into shares of any other class or series, or any other security, of the Corporation or any other entity, restrictions on the issuance of shares of the same series or of any other class or series, and the voting rights, if any, of the holders of the series.

(b) The Board is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issuance of shares of such series then outstanding, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof stated in the Certificate of Incorporation or the resolution of the Board originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

## ARTICLE V

5.1 General Powers. Except as otherwise provided in this Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

5.2 Number of Directors; Election; Term.

(a) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, the number of directors that constitutes the entire Board of the Corporation shall not exceed fifteen (15) directors, the exact number of directors to be determined from time to time solely by resolution of the Board.

(b) Subject to the special rights of holders of any series of Preferred Stock to elect directors, effective upon the closing date (the “**Effective Date**”) of the initial sale of shares of Common Stock in the Corporation’s initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, the directors of the Corporation (other than those directors elected by the special vote of the holders of one or more series of Preferred Stock, as applicable) shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The Board is authorized to assign members of the Board already in office to their respective classes. The term of office of the initial Class I directors shall expire at the first annual meeting of the stockholders following the Effective Date, the term of office of the initial Class II directors shall expire at the second annual meeting of the stockholders following the Effective Date and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the Effective Date. At each annual meeting of stockholders, commencing with the first annual meeting of stockholders following the Effective Date, each of the successors elected to replace the directors of a Class whose term shall have expired at such annual meeting shall be elected to hold office until the third annual meeting next succeeding his or her election and until his or her respective successor shall have been duly elected and qualified. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, if the number of directors that constitutes the Board is changed, any newly created directorships or decrease in directorships shall be so apportioned by the Board among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

(c) Notwithstanding the foregoing provisions of this Section 5.2, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation, or removal.

(d) Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

(e) During any period when the holders of any series of Preferred Stock have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director’s successor shall have been duly elected and qualified, or until such director’s right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, retirement, disqualification or

removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of the Corporation shall be reduced accordingly.

5.3 Removal. Any or all of the directors (other than the directors elected by the holders of any series of Preferred Stock of the Corporation, voting separately as a series or together with one or more other such series, as the case may be) may be removed at any time either with or without cause by the affirmative vote of a majority in voting power of all outstanding shares of stock of the Corporation entitled to vote thereon, voting as a single class; provided, however, that at any time when The Blackstone Group L.P. (together with its affiliates (including, without limitation, Blackstone Group Management L.L.C.), subsidiaries, successors and assigns (other than the Corporation and its subsidiaries), collectively, “**Blackstone**”) beneficially owns, in the aggregate, less than 30% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, any such director or all such directors may be removed only for cause and only by the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class. For the purposes of this Certificate of Incorporation, beneficial ownership of shares shall be determined in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

5.4 Vacancies and Newly Created Directorships. Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding or the rights granted pursuant to the Stockholders Agreement, expected to be dated as of October 6, 2014, by and among the Corporation and certain affiliates of Blackstone (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Stockholders Agreement**”), any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, retirement, disqualification, removal or other cause) shall be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum, by a sole remaining director or by the stockholders; provided, however, that at any time when Blackstone beneficially owns, in the aggregate, less than 30% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board shall be filled only by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by the stockholders). Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

5.5 Committees.

(a) Until such time as the Corporation ceases to be a Controlled Company, (i) Blackstone shall have the right (but not the obligation) to designate a majority of the members of each committee of the Board except to the extent that a designee of Blackstone is not permitted to serve on a committee under applicable law, rule, regulation or listing standards and (ii) any additional members of any committee shall be determined by the Board. For the purposes of this Section 5.5, “**Controlled Company**” means a company that is a “controlled company” within the meaning of such term under the New York Stock Exchange rules or the rules of such other stock exchange or securities market on which shares of Common Stock are then listed or quoted.

(b) Following such time as the Corporation ceases to be a Controlled Company, the composition of each committee of the Board shall be determined by the Board, subject to compliance with applicable law, rule, regulation or listing standards; provided that Blackstone shall have the right (but not the obligation) to designate to each such committee of the Board at least one member or such greater number of members that is as nearly proportionate to the representation of Blackstone on the Board as possible except to the extent that a designee of Blackstone is not permitted to serve on a committee under applicable law, rule, regulation or listing standards.

## ARTICLE VI

6.1 Amendment of this Certificate of Incorporation. Notwithstanding anything contained in this Certificate of Incorporation to the contrary and subject to the rights granted pursuant to the Stockholders Agreement, at any time when Blackstone beneficially owns, in the aggregate, less than 30% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, in addition to any vote required by applicable law, the following provisions in this Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class: Article V, this Article VI, Article VII, Article VIII, Article IX and Article X.

6.2 Amendment of Bylaws. Subject to the rights granted pursuant to the Stockholders Agreement, the Board is expressly authorized to make, repeal, alter, amend and rescind, in whole or in part, the bylaws of the Corporation (as in effect from time to time, the “**Bylaws**”) without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation. Notwithstanding anything to the contrary contained in this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote of the stockholders, at any time when Blackstone beneficially owns, in the aggregate, less than 30% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, in addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any certificate of designation relating to any series of Preferred Stock), the Bylaws or applicable law, the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith.

## ARTICLE VII

7.1 Action by Written Consent of Stockholders. At any time when Blackstone beneficially owns, in the aggregate, at least 30% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation’s registered office shall be made by hand, or by certified or registered mail, return receipt requested. At any time when

Blackstone beneficially owns, in the aggregate, less than 30% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders; provided, however, that any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock.

7.2 Annual Meetings. An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as shall be fixed exclusively by resolution of the Board or a duly authorized committee thereof.

7.3 Special Meetings. Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time only by or at the direction of the Board or the Chairman of the Board; provided, however, that at any time when Blackstone beneficially owns, in the aggregate, at least 30% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, special meetings of the stockholders of the Corporation for any purpose or purposes shall also be called by or at the direction of the Board or the Chairman of the Board at the request of Blackstone.

7.4 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

## ARTICLE VIII

8.1 Limitation of Director Liability. To the fullest extent permitted by the DGCL, as it presently exists or may hereafter be amended from time to time, no director of the Corporation, nor Blackstone, with respect to action taken by Blackstone pursuant to Section 5.5 of this Certificate of Incorporation, shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation (and Blackstone with respect to actions taken pursuant to Section 5.5) shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Neither the amendment nor repeal of this Article VIII, nor the adoption of any provision of this Certificate of Incorporation, nor, to the fullest extent permitted by the DGCL, any modification of law shall eliminate, reduce or otherwise adversely affect any right or protection of a current or former director of the Corporation or Blackstone existing at the time of such amendment, repeal, adoption or modification.

## ARTICLE IX

9.1 Corporate Opportunities. In recognition and anticipation that (a) certain directors, principals, officers, employees and/or other representatives of The Blackstone Group L.P. (the “**Original Stockholder**”) and its Affiliates (as defined below) may serve as directors, officers or agents of the Corporation, (b) the Original Stockholder and its Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (c) members of the Board who are not employees of



Director (other than the Corporation and any entity that is controlled by the Corporation) and (iii) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; and (b) “ **Person** ” shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

9.6 To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article IX.

#### ARTICLE X

10.1 Business Combinations; Section 203. The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

10.2 Exceptions. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation’s Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

(a) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or

(b) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

(c) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

10.3 Definitions. For purposes of this Article X, references to:

(a) “ **affiliate** ” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(b) “ **associate** ,” when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(c) “ **Blackstone Direct Transferee** ” means any person that acquires (other than in a registered public offering) directly from Blackstone or any of its affiliates or successors or any

“group”, or any member of any such group, of which such persons are a party under Rule 13d-5 of the Exchange Act beneficial ownership of 15% or more of the then outstanding voting stock of the Corporation.

(d) “ **Blackstone Indirect Transferee** ” means any person that acquires (other than in a registered public offering) directly from any Blackstone Direct Transferee or any other Blackstone Indirect Transferee beneficial ownership of 15% or more of the then outstanding voting stock of the Corporation.

(e) “ **business combination** ,” when used in reference to the Corporation and any interested stockholder of the Corporation, means:

- i. any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (A) with the interested stockholder, or (B) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section (b) of this Article X is not applicable to the surviving entity;
- ii. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;
- iii. any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (A) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (B) pursuant to a merger under Section 251(g) of the DGCL; (C) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (D) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (E) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (C)-(E) of this subsection (iii) shall there be an increase in the interested stockholder’s proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);
- iv. any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or
- v. any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees,

pledges, or other financial benefits (other than those expressly permitted in subsections (i) through (iv) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(f) “**control**,” including the terms “**controlling**,” “**controlled by**” and “**under common control with**,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of the Corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(g) “**interested stockholder**” means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the affiliates and associates of such person; but “interested stockholder” shall not include (A) Blackstone, any Blackstone Direct Transferee, any Blackstone Indirect Transferee or any of their respective affiliates or successors or any “group”, or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, or (B) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation, provided that such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(h) “**owner**,” including the terms “**own**” and “**owned**,” when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

- i. beneficially owns such stock, directly or indirectly; or
- ii. has (A) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person’s affiliates or associates until such tendered stock is accepted for purchase or exchange; or (B) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person’s right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or
- iii. has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (b) of

subsection (2) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

- (i) “ **person** ” means any individual, corporation, partnership, unincorporated association or other entity.
- (j) “ **stock** ” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.
- (k) “ **voting stock** ” means stock of any class or series entitled to vote generally in the election of directors.

#### **ARTICLE XI**

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or the Corporation’s stockholders, (c) any action asserting a claim against the Corporation or any director or officer of the Corporation arising pursuant to any provision of the DGCL or this Certificate of Incorporation or the Bylaws (as either may be amended and/or restated from time to time), or (d) any action asserting a claim governed by the internal affairs doctrine. To the fullest extent permitted by law, any person purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consents to the provisions of this Article XI.

#### **ARTICLE XII**

If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service or for the benefit of the Corporation to the fullest extent permitted by law.

**AMENDED AND RESTATED BYLAWS OF**

**VIVINT SOLAR, INC.**

(as amended and restated on October 6, 2014 and effective as of the closing of the corporation's initial public offering)

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**AMENDED AND RESTATED BYLAWS OF VIVINT SOLAR, INC.**

**ARTICLE I — CORPORATE OFFICES**

**1.1 REGISTERED OFFICE**

The registered office of Vivint Solar, Inc. (the “**corporation**”) shall be fixed in the corporation’s certificate of incorporation. References in these bylaws to the “certificate of incorporation” shall mean the certificate of incorporation of the corporation, as amended and/or restated from time to time, including the terms of any certificate of designations of any series of Preferred Stock.

**1.2 OTHER OFFICES**

The corporation’s board of directors may at any time establish other offices at any place or places where the corporation shall have offices.

**ARTICLE II — MEETINGS OF STOCKHOLDERS**

**2.1 GENERAL; CONDUCT OF BUSINESS**

Except as provided in Section 2.5(v), only such persons who are nominated in accordance with the procedures set forth in this Article II or the Stockholders Agreement (as defined in the certificate of incorporation) shall be eligible to serve as directors and only such business shall be conducted at an annual or special meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article II. Except as otherwise provided by law, the certificate of incorporation or these bylaws, the chairperson of the meeting shall, in addition to making any other determination that may be appropriate for the conduct of the meeting, have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these bylaws and, if any proposed nomination or business is not in compliance with these bylaws, to declare that such defective proposal or nomination shall be disregarded. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairperson of the meeting. The board of directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the board of directors, the chairperson of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the board of directors or prescribed by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants and on shareholder proposals.

Notwithstanding anything to the contrary in this Article II, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of this Article II, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Unless and to the extent determined by the board of directors or the chairperson of the meeting, meeting of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

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## 2.2 PLACE OF MEETINGS

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. The board of directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “**DGCL**”). In the absence of any such designation or determination, stockholders’ meetings shall be held at the corporation’s principal executive office.

## 2.3 ANNUAL MEETING

The annual meeting of stockholders shall be held on such date, at such time, and at such place (if any) within or without the State of Delaware as shall be designated from time to time by the board of directors and stated in the corporation’s notice of the meeting. At the annual meeting, directors shall be elected and any other proper business, brought in accordance with Section 2.5 of these bylaws, may be transacted. The board of directors may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

## 2.4 SPECIAL MEETING

(i) Special meetings of the stockholders may only be called in the manner provided in the certificate of incorporation then in effect and may be held either within or without the State of Delaware. The board of directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders; provided, however, that with respect to any special meeting of stockholders previously scheduled by the board of directors or the chairperson of the board of directors at the request of Blackstone (as defined in the certificate of incorporation), the board of directors shall not postpone, reschedule or cancel such special meeting without the prior written consent of Blackstone.

(ii) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been specified in the notice for such meeting and brought before the meeting in the manner provided in the certificate of incorporation then in effect. Nothing contained in this Section 2.4(ii) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

## 2.5 ADVANCE NOTICE PROCEDURES

(i) *Advance Notice of Stockholder Business* . At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the corporation’s proxy materials with respect to such meeting, (B) by or at the direction of the board of directors (or a duly authorized committee thereof), or (C) by a stockholder of the corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 2.5(i) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 2.5(i), except as provided in Section 2.5(v). In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these bylaws and applicable law. Except for proposals properly made in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations), and included in the notice of meeting given by or at the direction of the board of directors (or a duly authorized committee thereof), and except as provided in Section 2.5(v), for the avoidance of doubt, clause (C) above shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders.

(a) To comply with clause (C) of Section 2.5(i) above, a stockholder’s notice must set forth all information required under this Section 2.5(i) and must be timely received by the secretary of the corporation. To be timely, a stockholder’s notice must be received by the secretary at the principal executive offices of the corporation not less than 90 days nor more than 120 days prior to the one-year anniversary of the preceding year’s annual meeting (which date shall, for purposes of the corporation’s first annual meeting of stockholders after the closing of its initial public offering, be deemed to have occurred on May 31, 2014); *provided, however*, that in the event that the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year’s annual meeting, then, for notice by the stockholder to be timely, it must be so received by the secretary not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting, or (ii) the tenth day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder’s notice as described in this Section 2.5(i)(a). “**Public Announcement**” shall mean disclosure in a press release reported by the Dow Jones

News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or any successor thereto (the “**1934 Act**”).

(b) To be in proper written form, a stockholder’s notice to the secretary must set forth as to each matter of business the stockholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these bylaws, the language of the proposed amendment), and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the corporation’s books, of the stockholder proposing such business and any Stockholder Associated Person (as defined below) and representation that the stockholder is a holder of record of the stock of the corporation at the time of the giving of the notice, will be entitled to vote at such meeting and will appear in person or by proxy at the meeting to propose such business, (3) the class and number of shares of the corporation that are held of record or are beneficially owned by the stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by the stockholder or any Stockholder Associated Person as of the date of delivery of such notice, (4) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, (5) any material interest of the stockholder or a Stockholder Associated Person in such business to be brought before the meeting, (6) a statement whether either such stockholder or any Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of at least the percentage of the voting power of the corporation’s voting shares required under applicable law to carry the proposal (such information provided and statements made as required by clauses (1) through (6), a “**Business Solicitation Statement**”) and/or otherwise to solicit proxies or votes from stockholders in support of such proposal, and (7) any other information relating to such stockholder and Stockholder Associated Person required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal. In addition, to be in proper written form, a stockholder’s notice to the secretary must be supplemented not later than 10 days following the record date for notice of the meeting to disclose the information contained in clauses (3) and (4) above as of the record date for notice of the meeting. For purposes of this Section 2.5, a “**Stockholder Associated Person**” of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii).

(c) Except as provided in Section 2.5(v), no business proposed to be brought by a stockholder shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 2.5(i) and, if applicable, Section 2.5(ii). In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 2.5(i), and, if the chairperson should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(ii) *Advance Notice of Director Nominations at Annual Meetings* . Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 2.5(ii) shall be eligible for election or re-election as directors at an annual meeting of stockholders. Nominations of persons for election or re-election to the board of directors of the corporation shall be made at an annual meeting of stockholders only (A) by or at the direction of the board of directors (or a duly authorized committee thereof) or (B) by a stockholder of the corporation who (1) was a stockholder of record at the time of the giving of the notice required by this Section 2.5(ii) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has complied with the notice procedures set forth in this Section 2.5(ii), except as provided in Section 2.5(v). In addition to any other applicable requirements, for a nomination to be made by a stockholder, the stockholder must have given timely notice thereof in proper written form to the secretary of the corporation, except as provided in Section 2.5(v).

(a) To comply with clause (B) of Section 2.5(ii) above, a nomination to be made by a stockholder must set forth all information required under this Section 2.5(ii) and must be received by the secretary of the corporation at the principal executive offices of the corporation at the time set forth in, and in accordance with, the final three sentences of Section 2.5(i)(a) above provided additionally, however, that in the event that the number of directors to be elected to the board of directors is increased and there is no Public Announcement naming all of the nominees for director or specifying the size of the increased board made by the corporation at

least 10 days before the last day a stockholder may deliver a notice of nomination pursuant to the foregoing provisions, a stockholder's notice required by this Section 2.4(ii) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such Public Announcement is first made by the corporation.

(b) To be in proper written form, such stockholder's notice to the secretary must set forth:

(1) as to each person whom the stockholder proposes to nominate for election or re-election as a director (a "nominee"): (A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class and number of shares of the corporation that are held of record or are beneficially owned by the nominee and any derivative positions held or beneficially held by the nominee, (D) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee, (E) a description of all arrangements or understandings between or among the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder or concerning the nominee's potential service on the board of directors, (F) a written statement executed by the nominee agreeing to serve as a director if elected and acknowledging that as a director of the corporation, the nominee will owe a fiduciary duty under Delaware law with respect to the corporation and its stockholders, and (G) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election or re-election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation the nominee's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected or re-elected, as the case may be); and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (5) of Section 2.5(i)(b) above, and the supplement referenced in the second sentence of Section 2.5(i)(b) above (except that the references to "business" in such clauses shall instead refer to nominations of directors for purposes of this paragraph), and (B) a statement whether either such stockholder or Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of at least the percentage of the voting power of the corporation's voting shares reasonably believed by such stockholder or Stockholder Associated Person to be necessary to elect or re-elect such nominee(s) (such information provided and statements made as required by clauses (A) and (B) above, a "Nominee Solicitation Statement").

(c) At the request of the board of directors, any person nominated by a stockholder for election or re-election as a director must furnish to the secretary of the corporation (1) that information required to be set forth in the stockholder's notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person's nomination was given and (2) such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director or audit committee financial expert of the corporation under applicable law, securities exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the corporation and (3) such other information that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. In the absence of the furnishing of such information if requested, such stockholder's nomination shall not be considered in proper form pursuant to this Section 2.5(ii).

(d) Except as provided in Section 2.5(v), no person shall be eligible for election or re-election as a director of the corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 2.5(ii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(iii) *Advance Notice of Director Nominations for Special Meetings* .

(a) For a special meeting of stockholders at which directors are to be elected or re-elected, nominations of persons for election or re-election to the board of directors shall be made only (1) by or at the direction of the board of directors (or a duly authorized committee thereof) or (2) by any stockholder of the corporation who (A) is a stockholder of record at the time of the giving of the notice required by this Section 2.5(iii) and on the record date for the determination of stockholders entitled to vote at the special

meeting and (B) delivers a timely written notice of the nomination to the secretary of the corporation that includes the information set forth in Sections 2.5(ii)(b) and (ii)(c) above. To be timely, such notice must be received by the secretary at the principal executive offices of the corporation not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected or re-elected at such meeting. A person shall not be eligible for election or re-election as a director at a special meeting unless the person is nominated (i) by or at the direction of the board of directors (or a duly authorized committee thereof) or (ii) by a stockholder in accordance with the notice procedures set forth in this Section 2.5(iii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(b) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(iv) *Other Requirements and Rights*. In addition to the foregoing provisions of this Section 2.5, a stockholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.5. Nothing in this Section 2.5 shall be deemed to affect any rights of:

- (a) a stockholder to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act;
- (b) the corporation to omit a proposal from the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act; or
- (c) the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect directors under specified circumstances.

(v) *Blackstone*. Notwithstanding anything to the contrary contained in this Section 2.5, for as long as the Stockholders Agreement remains in effect with respect to Blackstone, Blackstone (to the extent then subject to the Stockholders Agreement) shall not be subject to the notice procedures set forth in this Section 2.5 with respect to any annual or special meeting of stockholders.

## 2.6 NOTICE OF STOCKHOLDERS' MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a notice in writing or by electronic transmission, in the manner provided by Section 232 of the DGCL, of the meeting, which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed to or transmitted electronically by the secretary of the corporation to each stockholder of record entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the written notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

## 2.7 QUORUM

Unless otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange, the holders of a majority of the voting power of the stock issued, outstanding and entitled to vote thereat, and present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders and, once a quorum is present to organize a meeting, it shall not be broken by the subsequent withdrawal of any stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the then-issued and outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange.

If a quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

## 2.8 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 2.11 of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

## 2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange.

## 2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Subject to the rights of the holders of the shares of any series of Preferred Stock or any other class of stock or series thereof that have been expressly granted the right to take action by written consent, any action required or permitted to be taken at any annual or special meeting of the stockholders of the corporation may be taken without a meeting, without prior notice and without a vote only to the extent permitted by and in the manner provided in the certificate of incorporation and in accordance with applicable law.

## 2.11 RECORD DATES

In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day immediately preceding the day on which notice is given, or, if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided*, *however*, that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned meeting.

In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

Unless otherwise restricted by the certificate of incorporation, in order that the corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the board of directors, (i) when no prior action of the board of directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, and (ii) if prior action by the board of directors is required by law, the record date for such purpose shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

## 2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A written proxy may be in the form of an electronic transmission which sets forth or is submitted with information from which it can be determined that the electronic transmission was authorized by the person.

## 2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided*, *however*, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date. The stockholder list shall be arranged in alphabetical order and show the address of each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal place of business. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place (as opposed to solely by means of remote communication), then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger of the corporation shall be the only evidence as to the identity of the stockholders entitled to examine the list of stockholders required by this Section 2.13 or to vote at any meeting of stockholders and the number of shares held by each of them.

## 2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, if required by law, the board of directors shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The number of inspectors shall be either one (1) or three (3). If any person appointed as

inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy.

Such inspectors shall:

- (i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- (ii) receive votes, ballots or consents;
- (iii) hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (iv) count and tabulate all votes or consents;
- (v) determine and certify the result; and
- (vi) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspector or inspectors may consider such information as is permitted by applicable law. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein.

### ARTICLE III — DIRECTORS

#### 3.1 POWERS

The business and affairs of the corporation shall be managed by or under the direction of the board of directors, except as may be otherwise provided in the DGCL or the certificate of incorporation.

#### 3.2 NUMBER OF DIRECTORS

The board of directors shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, and subject to the rights of the holders of any series of preferred stock, the number of directors shall be determined from time to time solely by resolution of the board of directors and shall not exceed 15 directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

#### 3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. If so provided in the certificate of incorporation, the directors of the corporation shall be divided into three classes.

#### 3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon notice given in writing or by electronic transmission to the board of directors, the chairperson of the board of directors, the chief executive officer or the secretary of the corporation; *provided, however*, that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the director. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Acceptance of such resignation shall not be necessary to make it effective. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable.

Vacancies (whether by death, resignation, retirement, disqualification, removal or other cause) and newly created directorships resulting from any increase in the authorized number of directors shall be filled only in the manner provided in the certificate of incorporation then in effect. If the directors are divided into classes, a person so elected by the directors then in office to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board of directors (as constituted immediately prior to any such increase), and subject to the Stockholders Agreement, the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

### 3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

### 3.6 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

### 3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairperson of the board of directors, the chief executive officer, the president, the secretary or a majority of the authorized number of directors, at such times and places as he or she or they shall designate.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid; or
- (iii) sent by electronic mail,

directed to each director at that director's address, telephone number or electronic mail address, as the case may be, as shown on the corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone or (ii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the corporation's principal executive office) nor the purpose of the meeting.

### 3.8 QUORUM; VOTING

At all meetings of the board of directors, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the board of directors, then the directors present at the meeting may adjourn such meeting, without notice other than announcement at the meeting, until a quorum is present.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

### 3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

### 3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

### 3.11 REMOVAL OF DIRECTORS

Directors of the corporation may be removed in the manner provided in the certificate of incorporation and applicable law.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

## ARTICLE IV — COMMITTEES

### 4.1 COMMITTEES OF DIRECTORS

Subject to the Stockholders Agreement and the certificate of incorporation, the board of directors may, by resolution passed by a majority of the directors then in office, designate one or more committees, each committee to consist of one or more of the directors of the corporation. Subject to the Stockholders Agreement and the certificate of incorporation, the board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member, subject to the Stockholders Agreement and the certificate of incorporation. Any such committee, to the extent provided in the resolution of the board of directors or in these bylaws, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the corporation.

### 4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

#### 4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings and notice);
- (iv) Section 3.8 (quorum; voting);
- (v) Section 3.9 (action without a meeting); and
- (vi) Section 7.5 (waiver of notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members. *However* :

- (i) the time of regular meetings of committees may be determined by resolution of the committee;
- (ii) special meetings of a committee may also be called by resolution of the committee at the request of a majority of the members of such committee; and
- (iii) notice of special meetings of any committee shall also be given to all alternate members, who shall have the right to attend all meetings of such committee. The board of directors or a committee may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

#### 4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

### ARTICLE V — OFFICERS

#### 5.1 OFFICERS

The officers of the corporation shall be a president and a secretary. The corporation may also have, at the discretion of the board of directors, a chairperson of the board of directors, a vice chairperson of the board of directors, a chief executive officer, a chief financial officer who shall be the treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws or otherwise determined by the board of directors. Any number of offices may be held by the same person.

#### 5.2 APPOINTMENT OF OFFICERS

The board of directors shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Section 5 for the regular election to such office.

### 5.3 SUBORDINATE OFFICERS

The board of directors may appoint or delegate powers or duties to, or empower the executive chairperson, chief executive officer or, in the absence of a chief executive officer, the president, to appoint or delegate powers or duties to, such other officers and agents as the business of the corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

### 5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment and subject to the rights granted under the Stockholders Agreement, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board of directors or, except in the case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation; *provided, however*, that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the officer. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

### 5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the corporation shall be filled by the board of directors or as provided in Section 5.3.

### 5.6 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairperson of the board of directors, the president, any vice president, the chief financial officer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares or other voting securities of any other corporation or entity or corporations or entities standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

### 5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors or the stockholders and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the board of directors.

### 5.8 THE CHAIRPERSON OF THE BOARD

The chairperson of the board shall have the powers and duties customarily and usually associated with the office of the chairperson of the board. If present, the chairperson of the board shall preside at meetings of the stockholders and of the board of directors. If not present, the chairperson of the board shall delegate such responsibilities to another director.

### 5.9 THE VICE CHAIRPERSON OF THE BOARD

The vice chairperson of the board shall have the powers and duties customarily and usually associated with the office of the vice chairperson of the board. In the case of absence or disability of the chairperson of the board, the vice chairperson of the board shall perform the duties and exercise the powers of the chairperson of the board.

### 5.10 THE CHIEF EXECUTIVE OFFICER

The chief executive officer shall have, subject to the supervision, direction and control of the board of directors, ultimate authority for decisions relating to the supervision, direction and management of the affairs and the business of the corporation customarily and usually associated with the position of chief executive officer, including, without limitation, all powers necessary to

direct and control the organizational and reporting relationships within the corporation. If at any time the office of the chairperson and vice chairperson of the board shall not be filled, or in the event of the temporary absence or disability of the chairperson of the board and the vice chairperson of the board, the chief executive officer shall perform the duties and exercise the powers of the chairperson of the board unless otherwise determined by the board of directors.

#### 5.11 THE PRESIDENT

The president shall have, subject to the supervision, direction and control of the board of directors and the chief executive officer if the president is not the chief executive officer, the general powers and duties of supervision, direction and management of the affairs and business of the corporation customarily and usually associated with the position of president. The president shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board or the chief executive officer. In the event of the absence or disability of the chief executive officer, the president shall perform the duties and exercise the powers of the chief executive officer unless otherwise determined by the board of directors.

#### 5.12 THE VICE PRESIDENTS AND ASSISTANT VICE PRESIDENTS

Each vice president and assistant vice president shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer or the president.

#### 5.13 THE SECRETARY AND ASSISTANT SECRETARIES

(i) The secretary shall attend meetings of the board of directors and meetings of the stockholders and record all votes and minutes of all such proceedings in a book or books kept for such purpose. The secretary shall have all such further powers and duties as are customarily and usually associated with the position of secretary or as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer or the president.

(ii) Each assistant secretary shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer, the president or the secretary. In the event of the absence, inability or refusal to act of the secretary, the assistant secretary (or if there shall be more than one, the assistant secretaries in the order determined by the board of directors) shall perform the duties and exercise the powers of the secretary.

#### 5.14 THE CHIEF FINANCIAL OFFICER AND ASSISTANT TREASURERS

(i) The chief financial officer shall be the treasurer of the corporation. The chief financial officer shall have custody of the corporation's funds and securities, shall be responsible for maintaining the corporation's accounting records and statements, shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. The chief financial officer shall also maintain adequate records of all assets, liabilities and transactions of the corporation and shall assure that adequate audits thereof are currently and regularly made. The chief financial officer shall have all such further powers and duties as are customarily and usually associated with the position of chief financial officer, or as may from time to time be assigned to him or her by the board of directors, the chairperson, the chief executive officer or the president.

(ii) Each assistant treasurer shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson, the chief executive officer, the president or the chief financial officer. In the event of the absence, inability or refusal to act of the chief financial officer, the assistant treasurer (or if there shall be more than one, the assistant treasurers in the order determined by the board of directors) shall perform the duties and exercise the powers of the chief financial officer.

### ARTICLE VI — STOCK

#### 6.1 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of stock of the corporation shall be represented by certificates, provided that the board of directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock in the corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson of the board of directors or vice-chairperson of the board of directors, or the president or a vice-president, and by the

treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, representing the number and class of shares of stock of the corporation owned by such holder registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. The board of directors shall have the power to appoint one or more transfer agents and/or registrars for the transfer or registration of certificates of stock of any class, and may require stock certificates to be countersigned or registered by one or more of such transfer agents and/or registrars. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the corporation in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the corporation shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

## 6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; *provided*, *however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section 6.2 or Sections 156, 202(a) or 218(a) of the DGCL or with respect to this section 6.2 a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

## 6.3 LOST, STOLEN OR DESTROYED CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond, in such sum as the corporation may direct, sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

## 6.4 DIVIDENDS

The board of directors, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the corporation's capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock, subject to the provisions of the certificate of incorporation.

The board of directors may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

## 6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of

shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer; provided, *however*, that such succession, assignment or authority to transfer is not prohibited by the certificate of incorporation, these bylaws, applicable law or contract.

#### 6.6 STOCK TRANSFER AGREEMENTS

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

#### 6.7 REGISTERED STOCKHOLDERS

Except as otherwise provided by the laws of Delaware, the corporation:

- (i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;
- (ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and
- (iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof.

### ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

#### 7.1 NOTICE OF STOCKHOLDERS' MEETINGS

Notice of any meeting of stockholders, if mailed, shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the corporation's records. An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

#### 7.2 NOTICE BY ELECTRONIC TRANSMISSION

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

- (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and
- (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;
- (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

An “**electronic transmission**” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

### 7.3 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

### 7.4 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

### 7.5 WAIVER OF NOTICE

Whenever notice is required to be given to stockholders, directors or other persons under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting (in person or by remote communication) shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders or the board of directors, as the case may be, need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

## ARTICLE VIII — INDEMNIFICATION

### 8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect (but, in the case of any amendment to the DGCL, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”) (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director of the corporation or an officer of the corporation, or while a director of the corporation or officer of the corporation is or was serving at the request of the corporation as a director, officer,

employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

## 8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect (but, in the case of any amendment to the DGCL, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the corporation, or while a director or officer of the corporation is or was serving at the request of the corporation as a director, officer, employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

## 8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

## 8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the corporation shall have power to indemnify its employees and its agents to the extent not prohibited by the DGCL or other applicable law. The board of directors shall have the power to delegate the determination of whether employees or agents shall be indemnified to such person or persons as the board of determines.

## 8.5 ADVANCEMENT OF EXPENSES

Subject to the other provisions of this Article VIII, to the fullest extent permitted by the DGCL, expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and, if required by the DGCL or in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise shall be so paid upon such terms and conditions, if any, as the corporation deems reasonably appropriate and shall be subject to the corporation's expense guidelines. The right to advancement of expenses shall not apply to any claim for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding referenced in Section 8.6(ii) or 8.6(iii) prior to a determination that the person is not entitled to be indemnified by the corporation.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 8.8, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (i) by a majority

vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

#### 8.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the DGCL, the corporation shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any amount in excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the corporation, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), or the payment to the corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the board of directors authorized the Proceeding (or the relevant part of the Proceeding), (b) the corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the corporation under applicable law, (c) otherwise required to be made under Section 8.7 or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law; *provided, however*, that if any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article VIII (including, without limitation, each portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

#### 8.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within 60 days after a written claim for indemnification has been received by the corporation or 20 days after a written claim for an advancement of expenses has been received by the corporation, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. The corporation shall indemnify such person against any and all expenses that are incurred by such person in connection with any action for indemnification or advancement of expenses from the corporation under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

#### 8.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

## 8.9 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of the DGCL.

## 8.10 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## 8.11 EFFECT OF REPEAL OR MODIFICATION

A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

## 8.12 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the “**corporation**” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to “**other enterprises**” shall include employee benefit plans; references to “**finances**” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**servicing at the request of the corporation**” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the corporation**” as referred to in this Article VIII.

# ARTICLE IX — GENERAL MATTERS

## 9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the board of directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

## 9.2 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

### 9.3 SEAL

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the board of directors. The corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

### 9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “ **person** ” includes both an entity and a natural person.

## ARTICLE X — AMENDMENTS

The board of directors is authorized to make, repeal, alter, amend and rescind, in whole or in part, these bylaws without the vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or the certificate of incorporation, subject to the rights granted pursuant to the Stockholders Agreement. Notwithstanding any other provisions of these bylaws or any provision of law which might otherwise permit a lesser vote of the stockholders, at any time when Blackstone beneficially owns, in the aggregate, less than 30% in voting power of the stock of the corporation entitled to vote generally in the election of directors, in addition to any vote of the holders of any class or series of capital stock of the corporation required by the certificate of incorporation (including any certificate of designation relating to any series of Preferred Stock (as defined in the certificate of incorporation), these bylaws or applicable law, the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the corporation to alter, amend, repeal or rescind, in whole or in part, any provision of these bylaws (including, without limitation, this Article X) or to adopt any provision inconsistent herewith.

A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.

**VIVINT SOLAR, INC.**

**CERTIFICATE OF AMENDMENT OF BYLAWS**

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting Secretary or Assistant Secretary of Vivint Solar, Inc., a Delaware corporation, and that the foregoing bylaws, comprising 27 pages, were amended and restated effective as of October 6, 2014.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this 6th day of October, 2014.

/s/ Shawn Lindquist

Shawn J. Lindquist, Secretary

## MASTER INTERCOMPANY FRAMEWORK AGREEMENT

This MASTER INTERCOMPANY FRAMEWORK AGREEMENT (this “*Agreement*”), is made and entered into as of September 30, 2014 (the “*Effective Date*”), by and between VIVINT SOLAR, INC. (f/k/a V Solar Holdings, Inc.), a Delaware corporation (together with its successors and permitted assigns, “*Vivint Solar*”), and VIVINT, INC., a Utah corporation (together with its successors and permitted assigns “*Vivint*”). Each of Vivint Solar and Vivint may also be referred to herein individually as a “*Party*”, and collectively as the “*Parties*”.

### RECITALS

WHEREAS, Vivint Solar and Vivint are affiliate business entities, under the common control and ownership of 313 Acquisition, LLC, a Delaware limited liability company.

WHEREAS, the Parties have been operated as an interrelated business enterprise, and now desire to establish a framework for the separation of their operations, and to clarify and memorialize their respective rights and ongoing responsibilities to each other and their respective subsidiaries, on the terms and conditions set forth in this Framework Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Transaction Agreements.

(a) *Agreements to be Executed at the Closing.* Concurrently with this Framework Agreement, the Parties will execute the following additional agreements (together with this Framework Agreement, the “*Transaction Agreements*”):

- |                      |       |  |
|----------------------|-------|--|
| Solar Developer LLC; | (i)   | the Marketing and Customer Relations Agreement between Vivint and Vivint |
|                      | (ii)  | the Trademark Assignment Agreement between Vivint and Vivint Solar;      |
| Licensing LLC;       | (iii) | the Trademark Assignment Agreement between Vivint and Vivint Solar       |
| Vivint Solar;        | (iv)  | Trademark License Agreement between Vivint Solar Licensing, LLC and      |
|                      | (v)   | the Limited Liability Company Agreement between Vivint and Vivint Solar; |

- (vi) the Transition Services Agreement between Vivint and Vivint Solar;
- (vii) the Product Development and Supply Agreement between Vivint and Vivint Solar Developer, LLC;
- (viii) the Non-Competition Agreement between Vivint and Vivint Solar; and
- (ix) the Bill of Sale between Vivint and Vivint Solar.

(b) *Definitions* . When used in any Transaction Agreement, the capitalized terms set forth in this Agreement (including Exhibit 1) will have the meanings set forth in this Agreement (including Exhibit 1).

2. Closing; Closing Deliveries .

(a) Subject to the terms and conditions of this Framework Agreement, the transactions contemplated in this Framework Agreement will take place at a closing (the “ *Closing* ”) to be held on the Effective Date at a mutually agreeable location or by the exchange of electronic documentation.

(b) At the Closing or prior to the Closing, each Party will deliver to the other:

- (i) an executed counterpart to each of the Transaction Agreements;
- (ii) all payments then due (if any) under the Transaction Agreements;
- (iii) all other agreements, documents, instruments, certificates, or other information or materials required to be delivered at the Closing by that Party under the Transaction Agreements; and
- (iv) a certificate of the Secretary of that Party certifying: (x) that attached to the certificate are true and complete copies of all resolutions adopted by the board of directors or managers of that Party authorizing the execution, delivery, and performance of each Transaction Agreement and the consummation of the transactions contemplated under the Transaction Agreements, that all of those resolutions are in full force and effect, and are all the resolutions adopted in connection with the transactions contemplated by the Transaction Agreements; and (y) the names of the officers of that Party authorized to sign each Transaction Agreement and the other documents to be delivered under the Transaction Agreements.

3. Representations and Warranties; Certain Covenants .

(a) *Representations and Warranties* . Each Party represents and warrants to the other that:

(i) *Organization and Authority* . Such Party is a corporation duly organized, validly existing, and in good standing under the Laws of the state of Delaware or Utah, as applicable. Such Party has full corporate power and authority to enter into the Transaction Agreements, to carry out its obligations under the Transaction Agreements, and to consummate the transactions contemplated by the Transaction Agreements. The execution and delivery by such Party of the Transaction Agreements and the performance by such Party of its obligations under the Transaction Agreements have been duly authorized by all requisite corporate action on the part of such Party, and each Party will provide the other Party evidence of those approvals upon request. The Transaction Agreements have been duly executed and delivered by such Party, and (assuming due authorization, execution, and delivery by the other Party) the Transaction Agreements constitute a legal, valid, and binding obligation of such Party enforceable against such Party in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

(ii) *No Conflicts; Consents* . The execution, delivery and performance by such Party of each of the Transaction Agreements and the consummation of the transactions contemplated by the Transaction Agreements do not and will not: (A) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of such Party; (B) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to such Party; or (C) require the consent, notice or other action by any Person under any Contract to which such Party is a Party, except as expressly set forth in the applicable Transaction Agreement or as shall have been obtained by such Party as of the Effective Date. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to such Party in connection with the execution and delivery of the Transaction Agreements and the consummation of the transactions contemplated by the Transaction Agreements.

(iii) *Legal Proceedings* . There are no Actions pending or, to such Party's knowledge, threatened against or by such Party or any Affiliate of such Party that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by the Transaction Agreements. To such Party's knowledge, no event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

(iv) *Compliance with Laws* . Each Party and its Subsidiaries will comply with all applicable laws in connection with the performance of obligations or exercise of rights under the Transaction Agreements.

(b) *Certain Covenants* . Vivint will not damage the value of the goodwill associated with the "Vivint" or "Vivint Solar" marks. Vivint Solar will not damage the value of the goodwill associated with the "Vivint" or "Vivint Solar" marks. If Vivint, in any country or jurisdiction, plans to cease use of or abandon rights in the "Vivint" mark, Vivint will provide prior written notice to Vivint Solar and Vivint Solar Licensing, LLC and hereby consents to Vivint Solar and Vivint Solar Licensing, LLC taking all reasonable actions to prevent abandonment of the Vivint mark in the applicable country or jurisdiction.

4. Confidentiality .

(a) *Obligations of the Receiving Party* .

(i) The Receiving Party and its Representatives will: (i) keep and safeguard as confidential all of the Disclosing Party's Confidential Information, using at least those measures that the Receiving Party takes to protect its own information of a similar nature, including, as applicable, secure access to information technology systems where Confidential Information is stored, which measures will, at minimum, be reasonable; (ii) not disclose any Confidential Information in any manner whatsoever, except in accordance with Sections 4(a)(ii) or 4(a)(iv), or as required by applicable Law pursuant to Section 4(b); and (iii) use the Disclosing Party's Confidential Information only to perform the Receiving Party's obligations or exercise the Receiving Party's rights under a Transaction Agreement or otherwise for the benefit of the Disclosing Party.

(ii) A Receiving Party may disclose the Disclosing Party's Confidential Information to the Receiving Party's Representatives who: (a) have a need to know the Confidential Information for the performance of the Receiving Party's obligations or exercise of its rights under a Transaction Agreement; (b) are informed by Receiving Party of the confidential nature of the Confidential Information; and (c) agree in writing to strictly abide by an obligation of confidentiality no less strict than the terms of this Section 4 or have another legal duty of confidentiality to the Receiving Party. Each Party will remain liable for any use or disclosure of the other Party's Confidential Information by any Representative in contravention of this Section 4 .

(iii) Neither Party will make any copy of the other Party's Confidential Information unless approved in writing by the other Party. Neither Party may remove any proprietary, copyright, confidential, trade secret or other legend from any of the other Party's Confidential Information or any copies.

(iv) Except for disclosures made in accordance with Section 4(a)(ii) , any disclosure by the Receiving Party or any of its Representatives of the other Party's Confidential Information is subject to the prior written consent of one of the following individuals at the Disclosing Party: (i) for Vivint Solar, the Chief Executive Officer or the Chief Legal Officer; and (ii) for Vivint, the President or the General Counsel.

(b) *Compelled Disclosure* . If either Party or a Subsidiary of either Party is requested to or required by Law to disclose the existence or terms of any of the Transaction Agreements or the other Party's Confidential Information in contravention of the provisions of this Section 4 , such Party must promptly provide the other Party with drafts of any filings or other documents in which such Party or its Subsidiary is required to disclose any portion of a Transaction Agreement, or any other Confidential Information of the other Party subject to the terms of this Section 4 , but in no event less than three business days prior to filing or disclosure, and such Party will consider in good faith making any changes to such materials as requested by the other Party to the extent such changes are, in the good faith judgment of such Party, permitted by Law.

(c) *Public Announcements; Non-Disparagement* . Neither Party may make any public announcement, including any press release, website disclosure, interview intended for publication, advertisement, professional or trade publication, mass marketing material, or other announcement to the general public, in each case regarding the other Party or any Transaction Agreement, unless the other Party agrees in writing in accordance with Section 4(a)(ii) or Section 4(a)(iv), as applicable. Each Party will avoid deceptive, misleading or unethical practices that are or might be detrimental to the other Party and not disparage the other Party or its products or services.

(d) *No Warranty* . EXCEPT AS EXPRESSLY SET FORTH IN ANOTHER TRANSACTION DOCUMENT, ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS.” NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF ITS CONFIDENTIAL INFORMATION.

(e) *Return of Materials* . All documents and other tangible objects containing or representing Confidential Information and all copies of them will be and remain the property of the Disclosing Party. Upon the Disclosing Party’s request, the Receiving Party will promptly deliver to the Disclosing Party all Confidential Information, without retaining any copies unless otherwise expressly authorized by another Transaction Agreement.

(f) *No License* . Nothing in this Section 4 is intended to grant any rights to either Party under any patent, copyright, or other intellectual property right of the other Party, nor will this Section 4 grant any Party any rights in or to the Confidential Information of the other Party, except as expressly set forth in this Section 4.

(g) *Term* . The obligations of each Receiving Party under this Section 4 will survive until all Confidential Information of the other Party becomes publicly known and made generally available through no action or inaction of the Receiving Party.

(h) *Indemnity* . The Receiving Party will indemnify and hold harmless the Disclosing Party from any damage, loss, cost, or liability (including reasonable attorney fees) arising or resulting from any unauthorized use or disclosure of the Disclosing Party’s Confidential Information by Receiving Party or any of its employees, agents, or Subsidiaries.

5. Copies of Records; Further Assurances . Each Party will promptly provide, upon the other Party’s written request, copies of the other Party’s records in a Party’s or any of its Subsidiaries’ possession or control. Each Party will promptly execute, or cause its Subsidiaries to promptly execute, such other documents and instruments, and provide such other assurances, as reasonably necessary to carry out the purpose and intent of the Transaction Agreements.

6. Miscellaneous . Except as otherwise expressly set forth in a Transaction Agreement, the following will apply to all Transaction Agreements:

(a) *Expenses* . All costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with any Transaction Agreement will be paid by the Party incurring those costs and expenses.

(b) *Arms-Length* . Each Party acknowledges and agrees that the Transaction Agreements are the product of an arm's-length negotiation, without duress, coercion, or collusion, and will be interpreted as agreements between two Parties of equal bargaining strength. It is the Parties' intention that the Transaction Agreements reflect the conditions which would be obtained between comparable, independent persons in substantially similar transactions (taking into account the relative responsibilities and risks between the Parties) and comparable circumstances (taking into account the location, market, and economic conditions), thereby providing the closest approximation of the workings of the open market.

(c) *Entire Agreement* . This Framework Agreement, together with the other Transaction Agreements, constitutes the entire agreement between the Parties and supersedes all prior oral and written negotiations, communications, discussions, and correspondence pertaining to the subject matter of the Transaction Agreements.

(d) *Headings, "including."* The article and section headings and any table of contents in any Transaction Agreement are for reference and convenience only and will not be considered in the interpretation of any of the Transaction Agreements. The term "including" means by way of example and not of limitation.

(e) *Order of Precedence* . If there is a conflict between this Framework Agreement and any other Transaction Agreement, this Framework Agreement will control unless the conflicting provision of the other Transaction Agreement specifically references the provision of this Framework Agreement to be superseded.

(f) *Amendments and Waivers* . The Transaction Agreements may only be amended or modified (including any waiver of or exception to any obligation or covenant under a Transaction Agreement) by an instrument in writing signed by each Party's President or Chief Executive Officer.

(g) *Binding Effect* . The Transaction Agreements will be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and permitted assigns.

(h) *Assignment* . Except as provided in another Transaction Agreement, neither this Agreement nor any other Transaction Agreement may be assigned or otherwise transferred, nor may any right or obligation hereunder or under another transaction Agreement be assigned or transferred by either Party without the consent of the other Party, which may not be unreasonably withheld, conditioned or delayed. Any permitted assignee shall assume all obligations of its assignor under this Agreement. This Agreement is binding upon the permitted successors and assigns of the Parties. Any attempted assignment not in accordance with this Section 6(h) shall be void.

(i) *Notices* . All notices, requests, demands, and other communications required or permitted to be given under any of the Transaction Agreements by either Party must be in writing delivered to the applicable Party at the following address:

If to Vivint Solar:

VIVINT SOLAR, INC.  
4931 North 300 West  
Provo, Utah 84604  
Attention: Greg Butterfield, CEO  
E-Mail: greg.butterfield@vivint.com

With copy to:

VIVINT SOLAR, INC.  
4931 North 300 West  
Provo, Utah 84604  
Attention: Shawn Lindquist, Chief Legal Officer  
E-Mail: shawn.lindquist@vivintsolar.com

If to Vivint:

VIVINT, INC.  
4931 North 300 West  
Provo, Utah 84604  
Attention: Alex Dunn, President  
E-Mail: adunn@vivint.com

With a copy to:

VIVINT, INC.  
4931 North 300 West  
Provo, Utah 84604  
Attention: Nathan Wilcox, General Counsel  
E-Mail: nwilcox@vivint.com

or to such other address as any Party may designate by written notice to the other Party. Each notice, request, demand, or other communication will be deemed given and effective, as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by first-class U.S. Mail, postage prepaid, upon the earlier to occur of receipt or three days after deposit in the U.S. Mail; (iii) if sent by a recognized prepaid overnight courier service, one business day after the date it is given to such service; (iv) if sent by facsimile, upon receipt of confirmation of successful transmission by the facsimile machine; and (iv) if sent by email, upon acknowledgement of receipt by the recipient.

(j) *Governing Law* . The interpretation and enforceability of the Transaction Agreements and the rights and liabilities of the Parties under the Transaction Agreements will be governed by the laws of the State of Utah without giving effect to any principles of conflict of laws.

(k) *Jurisdiction* . Each Party hereby irrevocably submits to the personal jurisdiction of any state or federal court sitting in the State of Utah, County of Salt Lake, in any suit, action or proceeding arising out of or relating to any of the Transaction Agreements. Each Party hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection

which that Party may raise now, or later have, to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Each Party agrees that, to the fullest extent permitted by applicable law, a final judgment in any such suit, action, or proceeding brought in such a court will be conclusive and binding upon such Party, and may be enforced in any court of the jurisdiction in which such Party is or may be subject by a suit upon such judgment. Each Party further agrees that personal jurisdiction over it may be effected by service of process by certified mail addressed as provided in Section 6(i), and when so made will be as if served upon it personally within the State of Utah.

(l) *WAIVER OF JURY TRIAL* . EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO ANY OF THE TRANSACTION AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED BY THE TRANSACTION AGREEMENTS, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY EITHER PARTY AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY HEREBY AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE PREVIOUS SENTENCE, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM, OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF ANY PORTION OF ANY TRANSACTION AGREEMENTS. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENT, RENEWAL, SUPPLEMENT, OR MODIFICATION TO ANY OF THE TRANSACTION AGREEMENTS.

(m) *Specific Performance* . The Parties agree that irreparable damage would occur if any provision of a Transaction Agreement were not performed in accordance with the terms of the applicable agreement, and that the Parties will be entitled to seek specific performance of the terms of the Transaction Agreements, in addition to any other remedy to which they are entitled at law or in equity.

(n) *Attorneys' Fees*

. In any suit, action, counterclaim, or arbitration brought relating to any Transaction Agreement or the breach or alleged breach of a Transaction Agreement, the prevailing Party will be entitled to recover a reasonable allowance for attorneys' fees and litigation expenses. For purposes of this Section 6(n), "prevailing Party" will mean: (a) a prevailing Party in any litigation as determined by a court of competent jurisdiction; and (b) a Party who agrees to dismiss an action or proceeding with prejudice upon the other's payment of the sums allegedly due or performance of covenants allegedly breached.

(o) *Severability* . If any provision of a Transaction Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, that provision will be enforced to the fullest extent permitted by applicable law, and the remainder of the applicable Transaction Agreement will remain in full force and effect. If the time period or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum time period or scope that that court deems enforceable, then that court will reduce the time period or scope to

the maximum time period or scope permitted by law. If the geographic region or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum geographic region or scope that that court deems enforceable, then that court will reduce the geographic region or scope to the maximum time period or scope permitted by law.

(p) Survival. The provisions of Section 1(b), Section 3, Section 4, Section 5, and Section 6 will survive any termination or expiration of this Framework Agreement and any of the other Transaction Agreements.

(q) Counterparts. The Transaction Agreements and any document related to the Transaction Agreements may be executed by the Parties on any number of separate counterparts, by facsimile or email, and all of those counterparts taken together will be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or portable document format (".pdf") signature page will constitute an original for the purposes of this Section 6(p).

(r) Force Majeure. Neither Party will be in breach or default under the Transaction Documents by reason of any failure or delay in the performance of its obligations under the Transaction Documents where the failure or delay is due to any unforeseen cause beyond its control, including civil disturbances, riot, rebellion, invasion, epidemic, war, terrorism, embargo, natural disaster, acts of God, flood, fire, sabotage, other events or any other circumstances or causes beyond that Party's control; provided, however, that the delayed Party gives the other Party prompt written notice of the failure or delay and the reason for that failure or delay and uses its reasonable efforts to avoid or limit the resulting failure or delay. Subject to the foregoing sentence, the period of performance (including, as necessary, the term of the applicable Transaction Agreement) for the delayed obligation will be extended by the duration of the delay.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Master Intercompany Framework Agreement as of the date first written above.

**VIVINT SOLAR:**

VIVINT SOLAR, INC.,  
a Delaware corporation

By: /s/ Greg Butterfield  
Name: Greg Butterfield  
Title: Chief Executive Officer

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

**VIVINT:**

VIVINT, INC.,  
a Utah corporation

By: /s/ Alex Dunn  
Name: Alex Dunn  
Title: President

MASTER INTERCOMPANY FRAMEWORK AGREEMENT  
*Vivint Solar, Inc. and Vivint, Inc.*

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## EXHIBIT 1

### DEFINITIONS

As used in the Transaction Agreements, the following terms have the following meanings unless otherwise defined in any Transaction Agreement:

(a) “**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

(b) “**Affiliate**” of a Party means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, that Party. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

(c) “**Change of Control**” means with respect to a Person: (i) the sale of all or substantially all of such Person’s assets or business; (ii) a merger, reorganization or consolidation involving such Person in which the voting securities of such Person outstanding immediately prior thereto cease to represent at least fifty percent (50%) of the combined voting power of the surviving entity immediately after such merger, reorganization or consolidation; or (iii) a person or entity, or group of persons or entities, acting in concert acquire more than fifty percent (50%) of the voting equity securities or management control of such Person (other than in connection with an arrangement principally for bona fide equity financing purposes of such Person in which the Person is the surviving corporation).

(d) “**Confidential Information**” means all non-public information provided or made available by or on behalf of one Party to the other Party or otherwise acquired, directly or indirectly, by the Receiving Party as a result of the relationship between the Parties, whether before or after the Effective Date, in writing, orally, or by inspection of tangible objects, including any analyses, compilations, forecasts, studies, or other documents prepared by the Receiving Party or its Representatives that contain or reflect such non-public information. Confidential Information includes the terms and existence of this Agreement, all other Transaction Agreements, all other documents or agreements entered into between the Parties relating to the Transaction Agreements, customer data, financial information, and employee data. Confidential Information may also include information disclosed to the Disclosing Party by third Parties. Confidential Information will not, however, include any information (other than “Personal Data,” as defined in the TSA) that the Receiving Party can demonstrate by competent evidence: (i) was publicly known or made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known or made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party or any of its Affiliates or Representatives; (iii) is lawfully obtained by the Receiving Party or an Affiliate or Representative from a third party without a breach by the third party of its legal, contractual, or fiduciary obligations of confidentiality; or

(iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by competent evidence in the Receiving Party's possession.

(e) “ **Contract** ” means contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments, and legally binding arrangements, whether written or oral.

(f) “ **Disclosing Party** ” means the Party who provides (by any means) any Confidential Information to the Receiving Party.

(g) “ **Encumbrance** ” means any charge, claim, equitable interest, mortgage, lien, option (including any right to acquire, right of pre-emption or conversion), pledge, hypothecation, security interest, title retention, easement, encroachment, right of first refusal or negotiation, adverse claim or restriction of any kind, including any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership, or any agreement to create any of the foregoing.

(h) “ **Governmental Authority** ” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

(i) “ **Governmental Order** ” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

(j) “ **Law** ” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority, including the rules and regulations of the U.S. Securities and Exchange Commission (the “ **SEC** ”).

(k) “ **Organizational Documents** ” means a Party's articles or certificate of incorporation and its by-laws, regulations or similar governing instruments required by the laws of its jurisdiction of formation or organization.

(l) “ **Permits** ” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

(m) “ **Person** ” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

(n) “ **Receiving Party** ” means the Party to whom any Confidential Information is provided (by any means) by the Disclosing Party.

(o) “ **Representatives** ” means directors, officers, employees, consultants, representatives, attorneys, accountants, agents, equity holders, auditors, senior lenders, take-out lenders, and Subsidiaries.

(p) “ **Subsidiary** ” of Vivint, Vivint Solar or any other Person means any corporation, partnership, limited liability company, association, trust, unincorporated association or other legal entity of which Vivint, Vivint Solar or any such other Person, as the case may be (either alone or through or together with any other Subsidiary), (i) owns, directly or indirectly, fifty percent (50%) or more of the shares of capital stock or other equity interests that are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity; or (ii) has the contractual or other power to designate a majority of the board of directors or other governing body (and, where the context permits, includes any predecessor of such an entity).

(q) “ **Tax** ” means (a) all direct and indirect statutory, governmental, federal, provincial, state, local, municipal, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, social security, national insurance, employee-related social charges or contributions, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, contributions, rates, levies, fees, assessments or charges of any kind whatsoever, whether disputed or not, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, (b) any liability for payment of amounts described in clause (a) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined, unitary or similar group for any period, or otherwise through operation of Law, and (c) any liability for the payment of amounts described in clause (a) or (b) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other Person.

## TRANSITION SERVICES AGREEMENT

This Transition Services Agreement (“*TSA*”) is made and entered into as of September 30, 2014 (the “*Effective Date*”), by and between VIVINT SOLAR, INC., a Delaware corporation (f/k/a V Solar Holdings, Inc.) (together with its successors and permitted assigns, “*Vivint Solar*”), and VIVINT, INC., a Utah corporation (together with its successors and permitted assigns “*Vivint*”). Each of Vivint Solar and Vivint may also be referred to herein individually as a “*Party*”, and collectively as the “*Parties*”.

### RECITALS

WHEREAS, Vivint Solar and Vivint are affiliate business entities, under the common control and ownership of 313 Acquisition, LLC, a Delaware limited liability company.

WHEREAS, the Parties have been operated as an interrelated business enterprise, but are undertaking to separate their operations, this TSA sets forth the terms under which Vivint will provide certain services to Vivint Solar.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Any capitalized term used but not defined in this TSA will have the meaning set forth for that term in the Master Framework Agreement which is being executed concurrently to this TSA by the Parties hereto.

2. Provision of Services; Standard of Performance.

(a) *Services*. Vivint will provide (or, subject to Section 5(b), cause one or more of its Subsidiaries or third Persons to provide) to Vivint Solar the services specified in Exhibit 1 (each, a “*Service*” and collectively, the “*Services*”).

(b) *Performance Standards*. Vivint will perform the Services with the same degree of care and diligence that Vivint takes in performing services for its own operations, and will give the Services at least the same priority as it accords its own operations, and in any event with no less care and diligence that Vivint performed the Services in the twelve (12) months prior to the Effective Date. Vivint will work promptly and diligently to resolve any issues that arise in systems and business processes that are shared with Vivint Solar and will not prioritize Vivint’s resolution over Vivint Solar’s resolution on any issue that affects both Parties. Vivint will work on an emergency, 24/7 basis to resolve any issues with the Services that materially impair Vivint Solar’s business.

TRANSITION SERVICES AGREEMENT

1 *Vivint Solar, Inc. & Vivint, Inc.*

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(c) *Transition and Migration* . Upon the termination or expiry of this TSA, the Parties will cooperate or migrate or otherwise afford Vivint Solar access to all property belonging to Vivint Solar, all work product then in progress, all materials in Vivint's possession containing Confidential Information of Vivint Solar, and any information regarding employees, customers, or prospective customers of Vivint Solar that is acquired by Vivint in connection with the provision of Services pursuant to this TSA, including without limitation, customer and customer prospect information, sales information, and customer lists and updates (including customer names, addresses and telephone numbers) (collectively, "**Vivint Solar Data**").

(d) *Data Security Requirements* . At all times during the Term, Vivint will (i) host, maintain and store Vivint Solar Data in a manner consistent with its hosting, maintenance and storage of its own data of a similar nature in the twelve (12) months prior to the Effective Date and (ii) exercise the same level of care with respect to the security of the Vivint Solar Data that it applies to its own data of a similar nature, and in no event less than a reasonable standard of care.

3. Payment.

(a) *Fees* . Subject to Vivint's performance of the Services in accordance with this TSA, Vivint Solar will pay to Vivint fees as set forth on Exhibit 1 (the "**Fees**"), which represents Vivint's good faith estimate of Vivint's full cost of providing the Services to Vivint Solar, without markup or surcharge. In the event that any of the Services are terminated, the Fees will be reduced by an amount that is agreed upon in good faith by both Parties to represent the proportion of Vivint's cost of providing the terminated Service to Vivint Solar.

(b) *Invoices* . Vivint will issue invoices for Services no later than 15 days after the last day of each calendar month during the term of this TSA for the Services provided by Vivint to Vivint Solar for that calendar month. Vivint Solar will pay invoiced Fees within 30 days of the invoice date by wire transfer to Vivint at an account provided by Vivint to Vivint Solar. Vivint Solar may, in good faith, dispute an invoice by providing Vivint with written notice identifying the basis for such dispute, and the Parties shall work in good faith to promptly resolve any dispute prior to the payment date; provided, however, if a dispute regarding amounts set forth in an invoice is ongoing, Vivint Solar shall nevertheless pay such disputed amounts by the payment date.

(c) *Taxes* . Unless explicitly stated otherwise, the Fees are exclusive of all U.S. federal, state, or local or non-U.S. sales, use, goods and services, value added or other similar Taxes or duties or other fees, however designated. If the provision of the Services or the relationship created between the Parties under this TSA gives rise to any Tax (other than a Tax based on Vivint's income), that Tax will be the responsibility of Vivint Solar, unless explicitly stated otherwise. The Parties will cooperate with each other in order to minimize Taxes subject to this Section 3(c) and to carry out the intent of this TSA. Each Party is responsible for its own income, franchise, business and occupation and similar Taxes.

4. Term and Termination; Reduction and Addition of Services.

(a) *Services Term* . The provision of each Service will commence on the Effective Date and will continue for an initial term of six (6) months, unless earlier terminated by a Party in accordance with Section 4(b) or Section 4(c) . Following the initial term, the term for each Service shall automatically renew for successive six (6) month terms, unless Vivint Solar provides Vivint with notice of its intent not to renew the Service at least sixty (60) days prior to the expiration of the current term. This TSA will terminate when all Services have expired or have been terminated.

(b) *Services Termination or Reduction* . Vivint Solar may terminate or reduce the scope or quantity of one or more of the Services, in whole or in part only upon Vivint’s written consent, which shall not be unreasonably withheld, conditioned or delayed. Upon termination of any Service, Vivint will no longer be obligated to provide the Service. If Vivint Solar terminates or reduces the scope or quantity of any Service under this Section 4(b) , Vivint shall use commercially reasonable efforts to terminate such Service as soon as possible thereafter, but in all events, and irrespective of such termination or reduction of scope or quantity, the Fees shall be reduced only in Vivint’s reasonable discretion and shall continue to be payable by Vivint Solar until the termination of the Term.

(c) *Termination of TSA for Material Breach* . Either Party may terminate this TSA upon written notice to the other Party if the other Party materially breaches any term or condition of this TSA and fails to correct the breach within thirty (30) days following written notice specifying the breach.

(d) *Effect of Termination* . Upon termination or expiration of this TSA:

(i) the Parties will cooperate to effect an orderly, efficient, effective and expeditious winding-up of the Services;

(ii) within thirty (30) days after the date of termination or expiration, each Party will return to the other Party any and all of the other Party’s materials, equipment, data (including in the case of Vivint Solar, the Vivint Solar Data), and Confidential Information, including all copies, then in such Party’s direct or indirect possession or control; and

(iii) Vivint will have no further obligation to perform any Services under this TSA.

Termination of this TSA by either Party will not act as a waiver of any breach or as a release of either Party from any liability for any breach. Termination of this TSA by a Party will be without prejudice to any other right or remedy of that Party under this TSA or applicable Law.

(e) *Survival* . The following Sections will survive any termination of this TSA: Section 2(d) , Section 3(a) (with respect to amounts owed as of termination), Section 4(d) , Section 4(e) , Sections 8(a) and 8(b)(ii) , Section 9 , and Section 10 .

(f) *Additional Services* . I f Vivint Solar desires to add any new service that reasonably relates to the current Services (that new service, “ **Additional Service** ”), the Parties will negotiate in good faith whether and on what terms Vivint will provide the Additional Service (and Vivint will not unreasonably withhold its agreement to provide Additional Service).

If the Parties agree to the terms of any Additional Service, the Parties will execute an addendum to Exhibit 1 to reflect the Additional Service. Upon execution of the addendum, the applicable Additional Service will be deemed to be “Services” for all purposes under this TSA.

5. Vivint Personnel.

(a) *Personnel* . Vivint will provide the Services using sufficient numbers of qualified personnel with appropriate experience and training to perform the Services, and will use commercially reasonable efforts to retain existing personnel with that experience and training or hire and train other qualified personnel to provide the Services.

(b) *Subcontractors* . Subject to Vivint’s obligations under Section 5(a), Vivint may use employees of Vivint or its Subsidiaries or other Affiliates or subcontractors to perform the Services. Any Subsidiaries, other Affiliates, or subcontractors used to provide Services must be bound in writing by non-use, non-disclosure, and security obligations with respect to Vivint Solar Data and Confidential Information at least as protective as those that bind Vivint under the terms of this TSA and Section 4 of the Master Framework Agreement (Confidentiality). Vivint will be responsible for any Services performed by its or its Subsidiaries’ or other Affiliates’ employees or any subcontractor and will be liable for any act or omission of any of those Persons that would be a breach of this TSA if committed by Vivint to the same extent as if Vivint were performing (or failing to perform) itself. Vivint Solar will not be responsible for any costs or expenses associated with any subcontracting by Vivint except as expressly agreed by Vivint Solar in writing Vivint’s use of any third Person to perform Services will not relieve Vivint of its obligations under this TSA.

6. Cooperation; Access.

(a) *Cooperation* . The Parties will reasonably cooperate in good faith with each other in connection with the provision of the Services, including Vivint’s reasonable cooperation with Vivint Solar, to enable Vivint Solar to establish its own infrastructure to perform the Services independently of Vivint as soon as practicable after the Closing Date.

(b) *Access* . Each Party will make reasonably available during regular business hours (or otherwise upon reasonable prior written notice by the other Party) to the other Party or its Representatives all: (a) personnel designated by such Party to perform obligations on its behalf under this TSA; (b) books and records maintained by such Party in connection with this TSA and other information or materials reasonably requested by the other Party for the purpose of exercising general oversight and monitoring of its rights under this TSA; and (c) records that such Party has prepared or maintained in performing its obligations under this TSA.

(c) *Fee Audit* . Vivint agrees that Vivint Solar’s access rights in subsection (b) above will permit Vivint Solar to verify that the Fees charged by Vivint in Section 3(a) hereunder represent Vivint’s good faith estimate of Vivint’s full cost of providing the Services to Vivint Solar, without markup or surcharge. In the event that an inspection of such costs by Vivint Solar reveals that the Fees charged by Vivint exceed such good faith estimate: (a) Vivint shall refund to Vivint Solar any Fees for Services paid in excess of such good faith estimate; and (b)

Vivint Solar will have the right to set off any prior excess payment of Fees from future payment of Fees where no refund has been provided.

(d) *Policy Compliance* . Without limiting any of either Party's other obligations under this TSA, for any work performed on the other Party's premises, each Party will comply with the security, confidentiality, safety and health policies of the other Party. Each Party will take commercially reasonable precautions to prevent, and will be responsible for, any injury to any Persons (including employees of the other Party) or damage to property (including the other Party's property) arising from or relating to such Party's performance its obligations under this TSA or the use by either Party of any of the other Party's equipment, tools, facility or other property.

(e) *Conflicting Obligations* . During the term of this TSA, Vivint will not accept work or enter into any agreement that would (or would reasonably be expected to) interfere with Vivint's ability to perform the Services in accordance with this TSA. Vivint represents and warrants that, as of the Effective Date, there is no other existing agreement or obligation on Vivint's part that would (or would reasonably be expected to) interfere with Vivint's ability to perform the Services in accordance with this TSA.

7. Management Process.

(a) *Transition Managers* . In order to facilitate the general intent and the terms of this TSA, each of the Parties has designated the individual(s) below as transition manager (each, a "**Transition Manager** ") to coordinate and manage the Services under this TSA and to serve as the principal contact in connection with the Services:

For Vivint Solar: Paul Dickson (Operations)

Dwain Kinghorn (IT)

For Vivint: David Bywater

Todd Thompson

The Transition Managers must meet at least on a monthly basis or as otherwise determined by the Transition Managers.

(b) *Dispute Resolution* . If a dispute arises regarding the interpretation or execution of this TSA, the Transition Managers will negotiate in good faith and attempt to resolve that dispute. If the Transition Managers are unable to resolve a dispute within five business days, then the Parties will refer the dispute to an executive of each of Vivint Solar and Vivint. If the executives are unable to resolve a dispute within two weeks, then (and only then) either Party may pursue legal recourse pursuant to the terms of the Master Framework Agreement. Each Party may change the designation of its Transition Managers upon written notice to the other Party.

(c) *Periodic Meeting* . The Transition Managers and each Party's relevant function leads will meet as often, and in no event less than every quarter, to review Vivint's performance of the Services by function and to verify the Fees invoiced by Vivint.

8. Intellectual Property Ownership; Licensing .

(a) *Intellectual Property Ownership*. Subject to Section 8(b), each Party will retain all rights in and to its patents, patent applications, patent disclosures, inventions and improvements (whether patentable or not), copyrights and copyrightable works (including computer programs) and registrations and applications therefor, including any software, firmware, or source code, trade secrets, know-how, database rights, drawings and all other forms of intellectual property (other than trademarks) (collectively, "**Intellectual Property**") created, developed or conceived prior to the Effective Date or outside the performance of Services and, in each case, without use of or access to any Confidential Information of the other Party. To the extent Vivint creates any updates, derivative works, changes or modifications of any Intellectual Property owned by Vivint Solar or Intellectual Property incorporating any Vivint Solar Confidential Information in performance of the Services, such updates, derivative works, changes, modifications or Intellectual Property ("**Vivint Solar Work Product**") will be owned solely by Vivint Solar (except to any portion thereof that incorporates any Intellectual Property or Confidential Information of Vivint, which portion, if any, shall continue to be owned solely by Vivint), and Vivint hereby irrevocably assigns to Vivint Solar all right, title, and interest in and to Vivint Solar Work Product, including all Intellectual Property therein to the extent set forth, and subject to the limitations of this Section 8(a). All other work product created by Vivint in performance of the Services ("**Vivint Work Product**") and all Intellectual Property therein will be owned solely by Vivint.

(b) *Licenses* .

(i) Each Party, on behalf of itself and its Affiliates (other than the other Party and its Subsidiaries), hereby grants to the other Party and its Subsidiaries a limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, fully paid-up, royalty-free, worldwide right and license to use any of its Intellectual Property that is incorporated in any materials provided to the other Party or is used by the other Party in actions taken under this Agreement solely during the Term and solely for the purpose of, and to the extent necessary for, performing or receiving Services under this TSA.

(ii) Vivint, on behalf of itself and its Affiliates (other than Vivint Solar), hereby grants, to Vivint Solar and its Subsidiaries, a worldwide, non-exclusive, perpetual, irrevocable, fully-paid, royalty-free, transferable (as set forth below), and sublicenseable (as set forth below) right and license to exploit in Vivint Solar's and its Subsidiaries' internal business operations: (a) the Vivint Work Product; and (b) the proprietary software applications known as (i) "Customer Management System (CMS)", (ii) "Digital Marketing Platform (DMP)", and (iii) "Personal Door Assistant (PDA)", together with all related source code, object code, application programming interfaces (APIs), databases, background systems and processes, and all documentation for such applications, in each case, that are owned by Vivint or the above Affiliates ("**Licensed Vivint Software**"). Vivint will provide or make available to Vivint Solar complete and accurate copies of the Licensed Vivint Software (as such items exist as of the

Effective Date, and after material changes are made thereto) promptly following Vivint Solar's request. During the term of this TSA.

(c) *Third Person IP*. Vivint will notify Vivint Solar if the provision of any Service requires the use or licensing of Intellectual Property (other than patents) owned or controlled by a third Person (other than Vivint's Subsidiaries) ("*Third Person IP*"). Upon receipt of such notification, Vivint Solar may, in its discretion: (i) terminate the Service that requires such Third Person IP; or (ii) instruct Vivint to use commercially reasonable efforts to obtain any necessary right or consent from any such third Person to provide the Services and Vivint Solar will reimburse Vivint for the proportional amount paid to the third Person to obtain those rights or consents (and amounts paid to the third Person for related support, if any). Vivint will provide Vivint Solar reasonable advance notice of additional expenses to be incurred by Vivint for obtaining additional rights or consents under this Section 8(c). For clarity, Vivint is not required to secure, on behalf of itself or Vivint Solar, any rights to any Third Party IP for use by Vivint Solar following the termination or expiry of the applicable Services or this TSA. Vivint Solar covenants to comply with and cause its employees and agents to comply with the terms of any license for any Third Person IP that have previously been provided to Vivint Solar in writing.

9. Indemnification; Limitation of Liability; Other.

(a) Indemnification by Vivint

. Except to the extent directly caused by the negligence or willful misconduct of Vivint Solar, Vivint hereby agrees to defend, pay, indemnify, and hold Vivint Solar and its Affiliates (other than Vivint and all direct and indirect subsidiaries of APX Parent Holdco, Inc.) harmless from and against any and all third party claims, demands, proceedings, judgments, and other liabilities of every kind, and all reasonable expenses incurred in investigation and resisting the same (including reasonable attorneys' fees), resulting from or in connection with: (i) the gross negligence or willful misconduct of Vivint, Vivint's Representatives or Subsidiaries, or any third Person performing Services under this TSA; (ii) a breach by Vivint of any representation or material obligation of this TSA; or (iii) the failure by Vivint to comply with its notification obligations to any Vivint employee, including payment of wages, provision of benefits, and payment of employment Taxes. Vivint's indemnification liability under the preceding subsections (ii) and (iii) will be offset by (and Vivint Solar agrees to use commercially reasonable efforts to pursue): (1) the proceeds of any applicable insurance policies; and (2) any indemnification amounts or other recovery available under any applicable agreement between Vivint Solar or its Subsidiaries and a third Person (including any supplier of Vivint Solar or its Subsidiaries).

(b) *Indemnification by Vivint Solar*. Except to the extent directly caused by the negligence or willful misconduct of Vivint, Vivint Solar hereby agrees to defend, pay, indemnify, and hold Vivint (and its Affiliates, other than the Vivint Solar and all direct and indirect subsidiaries of the Vivint Solar) harmless from and against any and all third party claims, demands, proceedings, judgments, and other liabilities of every kind, and all reasonable expenses incurred in investigation and resisting the same (including reasonable attorneys' fees), resulting from or in connection with: (i) the gross negligence or willful misconduct of Vivint Solar; (ii) a breach by Vivint Solar of any representation or material obligation of this TSA; or (iii) the failure by Vivint Solar to comply with its obligations to any Vivint Solar employee, including payment of wages, provision of benefits, and payment of employment Taxes. In

addition, Vivint Solar's indemnification liability under the preceding subsections (ii) and (iii) will be offset by (and Vivint agrees to use commercially reasonable efforts to pursue): (1) the proceeds of any applicable insurance policies; and (2) any indemnification amounts or other recovery available under any applicable agreement between Vivint or its Subsidiaries and a third Person (including any supplier of Vivint or its Subsidiaries).

(c) *Indemnification Process* . If either Party seeks indemnification under this Section 9 , then that Party will promptly notify the indemnifying Party in writing of the Action for which indemnification is sought, but the failure to give notice will not relieve the indemnifying Party of its obligations under this TSA except to the extent that the indemnifying Party was actually and materially prejudiced by that failure. The indemnifying party will have the right to control the defense and settlement of the Action, but the indemnified Party may, at its option and expense, participate and appear on an equal footing with the indemnifying Party. The indemnifying Party may not settle the Action without the prior written approval of the indemnified Party, which approval will not be unreasonably withheld, delayed, or conditioned.

(d) *Limitation of Liability* . Except for (i) any breach by a Party of Section 4 of the Master Framework Agreement (Confidentiality) or Section 2(d) of this TSA and (ii) liability arising from the gross negligence or willful misconduct of a Party (including liability arising from damage to personal property or the death or injury of any Person caused by the gross negligence or willful misconduct of a Party), neither Party will have any liability to the other Party under this TSA for compensatory, punitive, special, incidental or consequential damages (including loss of profits), regardless of the circumstances under which those damages arose, even if advised of the possibility of those damages. Except for: (i) any breach by a Party of the Section 4 of the Master Framework Agreement (Confidentiality) or Section 2(d) of this TSA; (ii) each Party's obligation to indemnify the other in accordance with this Section 9 ; and (iii) and liability arising from the gross negligence or willful misconduct of a Party (including liability arising from damage to personal property or the death or injury of any Person caused by the gross negligence or willful misconduct of a Party), the maximum liability of either Party under this TSA, including with respect to the performance or breach of this TSA, whether in contract, in tort (including negligence and strict liability) or otherwise, will not exceed greater of \$2,500,000 or the aggregate amount of all Fees paid under this TSA.

10. Master Framework Agreement . This TSA is governed by the Master Framework Agreement, including the provisions of Sections 4 (Confidentiality) and 6 (Miscellaneous) of the Master Framework Agreement.

11. Assignment; Change of Control . Except as provided in this Section 11 , this TSA may not be assigned or otherwise transferred, nor may any right or obligation hereunder be assigned or transferred, by either Party without the consent of the other Party, which may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may, without the other Party's consent, assign this TSA and its rights and obligations hereunder in whole or in part to (i) an Affiliate or (ii) in connection with a Change of Control; provided, however, that Vivint Solar must notify Vivint at least twenty (20) days before completion of any such Change of Control, and Vivint shall have the right (in its discretion), at any time after receipt of such notice, if Vivint Solar undergoes a Change of Control to the benefit of a Person and Vivint reasonably determines that the acquiring party is a competitor or an Affiliate of a

competitor of Vivint, to elect any one or more of the following options: (i) require Vivint Solar, including its acquiring party, to adopt reasonable procedures to be agreed upon in writing with Vivint to prevent the disclosure of all Confidential Information of Vivint and its Affiliates; or (ii) to terminate this TSA in its entirety, provided that Vivint shall give sixty (60) days prior written notice before terminating any non-information technology Services, and one hundred twenty (120) days prior written notice before terminating any information technology Services. Any permitted assignee shall assume all obligations of its assignor under this TSA. This TSA is binding upon the permitted successors and assigns of the Parties. Any attempted assignment not in accordance with this Section 11 shall be void. For purposes of this Section 11, “**Change of Control**” means with respect to a Person, (i) the sale of all or substantially all of such Person’s assets or business; (ii) a merger, reorganization or consolidation involving such Person in which the voting securities of such Person outstanding immediately prior thereto cease to represent at least fifty percent (50%) of the combined voting power of the surviving entity immediately after such merger, reorganization or consolidation; or (iii) a person or entity, or group of persons or entities, acting in concert acquire more than fifty percent (50%) of the voting equity securities or management control of such Person (other than in connection with an arrangement principally for bona fide equity financing purposes of such Person in which the Person is the surviving corporation).

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGES TO TRANSITION SERVICES AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Transition Services Agreement as of the date first written above.

**VIVINT SOLAR:**

VIVINT SOLAR, INC.,  
a Delaware corporation

By: /s/ Greg Butterfield  
Name: Greg Butterfield  
Title: Chief Executive Officer

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

**VIVINT:**

VIVINT, INC.,  
a Utah corporation

By: /s/ Alex Dunn  
Name: Alex Dunn  
Title: President

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## EXHIBIT 1

### Services

1. **Home Damage Services:** Vivint will:
  - a. exclusively receive inbound phone calls and emails from Vivint Solar regarding the provision of Home Damage Services.
  - b. coordinate with local contractors and Vivint employees to fix home damage claims from Vivint Solar customers in a timely manner.
2. **Fleet Administration Services:** Vivint will:
  - a. exclusively coordinate with local offices where Vivint Solar operates in order to ensure Vivint Solar's compliance with Department of Transportation requirements.
  - b. coordinate with the Vivint Solar fleet operator to purchase vehicles for Vivint Solar offices,
  - c. monitor the Gas Cards/Mileage of Vivint Solar's Fleet
  - d. coordinate with local repair shops to ensure that Vivint Solar vehicles are maintained.
  - e. administer claims and repairs for Vivint Solar vehicle collisions and other damage.
  - f. coordinate with the Vivint Solar local drivers to process any tickets that are issues.
  - g. coordinate with Vivint Solar's HR department to ensure that employees hired by Vivint Solar are qualified to operate Vivint Solar vehicles and to run background check on drivers hired by Vivint Solar.
  - h. ensure that all vehicles in the Vivint Solar fleet are marked with the appropriate branding, wraps, Department of Transportation license plates and other accessories.
3. **Mailing and Shipping Services:**
  - a. Vivint will handle incoming mail and delivers mail to Vivint Solar employees.
  - b. Vivint Solar employees can obtain office supplies from Vivint.
  - c. Vivint will handle Vivint Solar shipping needs for mail and small parcel.
  - d. For three years following the termination or expiration of this TSA, Vivint shall forward all mail addressed to Vivint Solar or a Vivint Solar employee to Vivint Solar.
4. **Cafeteria Services:**
  - a. Vivint will ensure the cafeteria service provider prepares meals for Vivint Solar employees.
  - b. Vivint will provide access to dining hall for Vivint Solar employees, and provide cleaning, dishwashing and all other dining hall support and maintenance services.
  - c. Vivint will ensure the cafeteria service provider caters special events upon request.
5. **Telecommunications and Internet Services:** Vivint will allow Vivint Solar to use its telephone, Internet, WiFi and other telecommunication services providers in the same manner as provided prior to the Closing Date.

**6. Technology Hardware Services**

- a. Vivint will accept and process orders for hardware procurement from Vivint Solar and manage all deliveries of hardware to Vivint Solar. Vivint will administer and process all returns to hardware on behalf of Vivint Solar and provide Vivint Solar with all refunds and rebates received from such returns.
- b. Vivint will provide industry standard hardware technical support to Vivint Solar regarding hardware that Vivint procures on Vivint Solar's behalf.

**7. Shared Third Party Software:** Vivint will provide Vivint Solar with access to and use of the third party software and services listed below (“*Shared Third Party Software*”). Upon the Closing Date, Vivint Solar will have the number of license-seats to the Shared Third Party Software that it used immediately before the Closing Date. At Vivint Solar's request, Vivint will use commercially reasonable efforts to increase or decrease the license-seats to the Shared Third Party Software available to Vivint Solar. Where applicable, Vivint will host Vivint Solar's usage of the Shared Third Party Software in a separate image and implement Vivint Solar's independent changes to the Shared Third Party Software. Vivint will provide training sessions to Vivint Solar prior to all new feature rollouts of the Shared Third Party Software. Vivint will ensure that all updates, upgrades, improvements, bug fixes, or other distributions related to the Shared Third Party Software it receives are made available to Vivint Solar within a commercially reasonable period. Upon termination of this Service, Vivint Solar shall acquire and assume responsibility for all seat or other licenses to the Shared Third Part Software used by it or purchased on Vivint Solar's behalf. The Shared Third Party Software consists of the following:

- a. Great Plains
- b. Workday
- c. Open Hire
- d. MyClearBenefits
- e. Salesforce
- f. Zuora
- g. Coupa
- h. AtTask
- i. Click
- j. Eloqua
- k. Concur
- l. Melissa
- m. Five9
- n. Optimizely
- o. Cornerstone
- p. Microsoft

**8. Licensed Vivint Software:** Vivint will host Vivint Solar's instance of the Licensed Vivint Software and allow Vivint Solar employees to access the Licensed Vivint Software subject to the

license set out in Section 8(b)(ii) of this TSA. Vivint will grant certain employees of Vivint Solar administration rights over the Vivint Solar's instance of Licensed Vivint Software. Vivint will promptly upload any materials provided by Vivint Solar to Vivint Solar's Licensed Vivint Software instance. Vivint will ensure that all updates, upgrades, improvements, bug fixes, or other distributions related to the Licensed Vivint Software it receives are made available to Vivint Solar within a commercially reasonable period. The Licensed Vivint Software consists of the following:

- a. Customer Management System (CMS)
- b. Digital Marketing Platform (DMP)
- c. Personal Door Assistant (PDA)

**9. Training Services:** Vivint will provide training curricula for in-common training and shared access to training facilities to Vivint Solar employees.

**10. Medical, Dental, HAS, Other Benefits Services:**

- a. Vivint will be responsible for managing billing, payments, enrollment adds and drops, and any other benefits administration duties required for HSA, Medical, Dental, STD/LTD, and Life insurance on behalf of Vivint Solar Employees.
- b. Vivint will be responsible for sending all email communications required regarding benefits (enrollment, open enrollment, benefit changes, etc.) to employees of Vivint Solar, as directed by Vivint Solar and respond to all questions related to current benefits from employees of Vivint Solar.
- c. Vivint will continue all COBRA benefits administration until such time as Vivint Solar implements an independent plan.
- d. Vivint will manage in good faith the relationship with the benefits broker on behalf of Vivint Solar.
- e. The Parties will work together in good faith to resolve any disputes that arise or result from a Vivint Solar employee's enrollment into a Vivint-administered benefits plan.
- f. Following termination of this schedule or the Transition Services Agreement for any reason, Vivint will use commercially reasonable efforts to administer and finally process any claims that were submitted by Vivint Solar employees through the Benefits Services prior to termination.

**11. 401(k) Services:** Vivint will allow Vivint Solar employees to continue to use and access Vivint's 401k administration plan.

**Fees:** The Fees shall be a monthly payment of \$ 313,000. The Parties agree to meet periodically as reasonably needed to discuss adjustments to the Fees if either Party believes such Fees no longer represents Vivint's good faith estimate of Vivint's full cost of providing the Services to Vivint Solar, without markup or surcharge.

## NON-COMPETITION AGREEMENT

This NON-COMPETITION AGREEMENT (“*Agreement*”) is made and entered into as of September 30, 2014 (the “*Effective Date*”), by and between VIVINT SOLAR, INC. (f/k/a V Solar Holdings, Inc.), a Delaware corporation (together with its successors and permitted assigns, “*Vivint Solar*”), and VIVINT, INC., a Utah corporation (together with its successors and permitted assigns “*Vivint*”). Each of Vivint Solar and Vivint may also be referred to herein individually as a “*Party*”, and collectively as the “*Parties*”.

### RECITALS

WHEREAS, Vivint Solar and Vivint are affiliate business entities, under the common control and ownership of 313 Acquisition, LLC, a Delaware limited liability company.

WHEREAS, the Parties have been operated as an interrelated business enterprise, and concurrently with the execution of this Agreement are executing a Master Intercompany Framework Agreement (“*Master Framework Agreement*”), and other related agreements to establish a framework for the separation of their operations, and to clarify and memorialize their respective rights and ongoing responsibilities to each other and their respective Subsidiaries (this Agreement, the Master Framework Agreement, and related agreements, the “*Transaction Agreements*”).

WHEREAS, in order to protect the goodwill of each of the Parties after the separation of their operations as contemplated by the Transaction Agreements, this Agreement sets forth certain restrictive covenants of each Party.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions

. Any capitalized term used but not defined in this Agreement will have the meaning set forth for that term in the Master Framework Agreement or another Transaction Agreement. Capitalized terms used in this Agreement and not otherwise defined in this Agreement or in the Master Framework Agreement will have the following meanings:

“*Aggregate Monitoring*” means any device or technology that collects, monitors, stores, or communicates data relating to the total net inflow and outflow of electricity into or out of a residence and from or to the applicable power grid, but specifically excluding In-Home Consumption Monitoring.

“*Energy Inverter*” means any device or technology that converts direct current electricity to alternating current electricity.

NON-COMPETITION AGREEMENT  
Vivint Solar, Inc. & Vivint, Inc.

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“ **Energy Management** ” means the wireless or remote management and control of energy controlling or consuming devices in a residence, including without limitation thermostats, HVAC, lighting, and other appliances and In-Home Consumption Monitoring, but specifically excluding the Vivint Solar Business, Energy Inverters, Aggregate Monitoring, Storage Monitoring and Micro-grid Technology.

“ **In-Home Consumption Monitoring** ” means any device or technology that collects, monitors, stores, or communicates data relating to the use or consumption of energy inside a residence.

“ **Key Employee** ” means any member of a Party’s executive or senior management team, and any employee of a Party who is primarily engaged in managing sales, installation or servicing of that Party’s products and services to end user customers. For the purposes of this Agreement, a Key Employee of a Party will continue to be deemed a Key Employee of that Party for one hundred eighty (180) days after termination of the employment relationship between that Party and that Key Employee.

“ **Micro-grid Technology** ” means any device or technology enabling or supporting a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries to act as a single controllable entity with respect to the grid and that connects and disconnects from such grid to enable it to operate in both grid-connected or “island” mode.

“ **Restricted Parties** ” means: (a) with respect to Vivint, APX Parent Holdco, Inc., a Delaware corporation, together with all of its direct or indirect Subsidiaries that may exist now or after the Effective Date; and (b) with respect to Vivint Solar, Vivint Solar and its direct or indirect Subsidiaries that may exist now or after the Effective Date.

“ **Storage Monitoring** ” means any device or technology that collects, monitors, stores, or communicates data relating to storage of power in a residence and the aggregate net use of such stored power within such residence, but excludes In-Home Consumption Monitoring.

“ **Vivint Business** ” means the business of: (a) residential and commercial automation and security products and services; (b) Energy Management; (c) products and services for accessing and using the Internet, including without limitation voice over Internet protocol products or services and wireless Internet connectivity; (d) products and services for the storage, access, retrieval, and sharing of data; (e) fixed and mobile data services; (f) audio/video entertainment services; (f) healthcare and wellness services (e.g., aging in place, fitness, environmental sensors); (g) content distribution network services, including without limitation content distribution, caching, or acceleration; (h) wholesale cloud computing services (e.g., distributed viral computing infrastructure as a service); (i) demand response services; and (j) information security (e.g., LifeLock).

“ **Vivint Competitor** ” means a Person who is engaged in any aspect of the Vivint Business. Without limiting the generality of the foregoing sentence, “Vivint Competitor” excludes those Persons listed on Exhibit A.

“ **Vivint Solar Business** ” means the business of selling renewable energy or energy storage products and services to any Person.

“ **Vivint Solar Competitor** ” means a Person who is engaged in any aspect of the Vivint Solar Business.

2. Non-Competition

(a) *Vivint’s Covenant of Non-Competition* . For a period commencing on the Effective Date and ending on the third (3<sup>rd</sup>) anniversary of the Effective Date (the “ **Non-Compete Period** ”), Vivint will not, nor will it permit its other Restricted Parties to, directly or indirectly (in any capacity, including as a direct or indirect owner, partner, member, investor, lender, principal, director, officer, employee, consultant or agent of any other Person and including through contracting with a Vivint Solar Competitor), engage in any aspect of the Vivint Solar Business in any market in which Vivint Solar is operating. Notwithstanding the foregoing or anything to the contrary in this Agreement, Vivint will not violate any provision of this Section 2(a) if it makes available products or services to third parties other than Vivint Solar Competitors or engages in any activity permitted under the Marketing and Customer Relations Agreement. For clarity, and without limiting Vivint’s obligations set forth in this Section 2(a), Vivint may not make available to any Vivint Solar Competitor (including SolarCity Corporation) during the Non-Compete Period any product or service described in the Product Development and Supply Agreement, including any Monitoring and Communications Equipment, any Product, or any Hosted Software.

(b) *Vivint Solar’s Covenant of Non-Competition*. During the Non-Compete Period, Vivint Solar will not, nor will it permit its other Restricted Parties to, directly or indirectly (in any capacity, including as a direct or indirect owner, partner, member, investor, lender, principal, director, officer, employee, consultant or agent of any other Person and including through contracting with a Vivint Competitor), engage in the Vivint Business anywhere in the world. Notwithstanding anything to the contrary in this Agreement, Vivint Solar will not violate any provision of this Section 2(b) if it engages in any activity permitted under the Marketing and Customer Relations Agreement.

(c) *Leads* . Without otherwise limiting Vivint’s obligations as set forth in Section 2(a), Vivint may provide to Vivint Solar Competitors (other than SolarCity Corporation) leads for prospective customers of products or services within the Vivint Solar Business in markets where Vivint Solar is not operating. Starting ten (10) business days after Vivint Solar’s delivery of written notice to Vivint that Vivint Solar has commenced operations in a market, Vivint will thereafter exclusively provide all leads relating to the Vivint Solar Business solely to Vivint Solar. For the avoidance of doubt, in no event will Vivint provide any lead relating to the Vivint Solar Business to any person other than Vivint Solar in the markets where Vivint Solar operates.

(d) *Investments* . Nothing in this Agreement will prohibit: (i) either Party or any of their respective Affiliates from collectively owning as a passive investment no more than two and one half percent (2.5%) of the equity of any publicly traded company; or (ii) Vivint Solar from seeking and obtaining financing from any Vivint Competitor, provided that any such

financing does not require as a term of such financing that Vivint Solar take any action that would violate any provision of this Agreement.

(e) *Equitable Remedies* . Each Party acknowledges and agrees that the other Party would be irreparably harmed by any violation of the restrictive covenants set forth in Section 2(a) or 2(b), as applicable, and that, in addition to all other rights and remedies available to the other Party at law, the other Party will be entitled to injunctive and other equitable relief to prevent or enjoin any such violation as set forth in the Master Framework Agreement. If any Restricted Party violates Section 2(a) or 2(b), as applicable, the period of time during which those provisions are applicable will automatically be extended for a period of time equal to the time that that violation began until that violation permanently ceases.

3. Non-Solicitation

(a) *Non-Solicitation* . During the Term of this Agreement: (i) none of the Vivint Solar Restricted Parties will directly or indirectly solicit any Key Employee of any Vivint Restricted Party for employment without the prior written consent of the President of Vivint; and (ii) none of the Vivint Restricted Parties will directly or indirectly solicit any Key Employee of a Vivint Solar Restricted Party for employment without the prior written consent of the President of Vivint Solar; provided, however, that the following will not be deemed solicitation for the purposes of this Section 3(a): (1) the use of general newspaper or online advertisement and other general non-targeted recruitment techniques in the ordinary course of business; and (2) communications between a Vivint Restricted Party and a Vivint Solar Key Employee after the Vivint Solar Key Employee has initiated contact with that Vivint Restricted Party, or communications between a Vivint Solar Restricted Party and a Vivint Key Employee after the Vivint Key Employee has initiated contact with that Vivint Solar Restricted Party. For the avoidance of doubt, the restrictions in this Section 3(a) may only be waived or modified between the Parties pursuant to Section 6(f) of the Master Framework Agreement.

(b) *Equitable Remedies* . Each Party, on behalf of itself and its Affiliates, acknowledges and agrees that the remedy at law for any breach of this Section 3 may be inadequate, and that the sole and exclusive remedy for any breach by the other Party or any of the other Party's Restricted Parties of Section 3(a) is to seek specific performance, injunctive relief or another equitable remedy.

4. Term . This Agreement will become effective on the Effective Date, and will continue for a term of five (5) years (the "*Term*").

5. Representations . Each Party represents that it, and each of its respective Restricted Parties, is willing and able to engage in businesses that are not restricted pursuant to Section 2(a) or 2(b), as applicable, and that enforcement of the restrictive covenants set forth in Sections 2(a), 2(b), or 3(a) as applicable, will not be unduly burdensome to any Restricted Party. Each Party acknowledges that its agreement to the restrictive covenants set forth in Section 2(a), 2(b), and 3(a), as applicable, is a material inducement and condition to the other Party's willingness to enter into this Agreement and the other Transaction Agreements, to consummate the transactions contemplated by this Agreement and the other Transaction Agreements, and to perform its obligations under this Agreement and the other Transaction Agreements. Each Party

acknowledges and agrees, on behalf of itself and its other Restricted Parties, that the restrictive covenants and remedies set forth in Sections 2(a), 2(b), and 3(a), as applicable, are reasonable as to time, geographic area, and scope of activity, and do not impose a greater restraint than is necessary to protect the goodwill and legitimate business interests of the Parties and their other respective Restricted Parties.

6. Reformation. If any restrictive covenant set forth in Sections 2(a), 2(b), or 3(a) is found by a court of competent jurisdiction to contain limitations as to time, geographic area, or scope of activity that are not reasonable or not necessary to protect the goodwill or legitimate business interests of the other Party receiving the benefit of the restrictive covenant, then that court is hereby authorized and directed to reform the provision to the minimum extent necessary to cause the limitations contained in Sections 2(a), 2(b), or 3(a), as applicable, as to time, geographical area, and scope of activity to be reasonable and to impose a restraint that is not greater than necessary to protect the goodwill and legitimate business interests of the Party receiving the benefit of the restrictive covenant.

7. Termination of Other Restrictive Covenants. The Parties acknowledge and agree that any and all restrictive covenants and agreements between the Parties concerning exclusivity or non-competition contained in that certain Administrative Services Agreement between the Parties, dated as of June 1, 2011, as amended, was terminated, and further that such agreement was terminated in its entirety pursuant to that certain Termination Agreement between the Parties, dated as of June 20, 2013, such termination effective as of such date.

8. Master Framework Agreement. This Agreement is governed by the Master Framework Agreement, including the provisions of Section 4 (Confidentiality) and Section 6 (Miscellaneous) of the Master Framework Agreement.

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGES TO NON-COMPETITION AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Non-Competition Agreement as of the date first written above.

**VIVINT SOLAR:**

VIVINT SOLAR, INC.,  
a Delaware corporation

By: /s/ Greg Butterfield  
Name: Greg Butterfield  
Title: Chief Executive Officer

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

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NON-COMPETITION AGREEMENT  
*Vivint Solar, Inc. & Vivint, Inc.*

**VIVINT:**

VIVINT, INC.,  
a Utah corporation

By: /s/ Alex Dunn  
Name: Alex Dunn  
Title: President

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NON-COMPETITION AGREEMENT  
*Vivint Solar, Inc. & Vivint, Inc.*

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EXHIBIT A

**SPECIFIC EXCLUSIONS TO VIVINT COMPETITORS**

- Enphase Energy
- SolarEdge Systems
- Tigo Energy
- Fronius International GmbH
- PowerOne Inc.
- SMA Solar Technology AG
- Chicony Power Technology Co., Ltd.
- Delta Energy Systems
- Huawei Technologies Co. Ltd.
- KACO new energy, Inc.
- Any other seller of Energy Inverters or related components

NON-COMPETITION AGREEMENT  
*Vivint Solar, Inc. & Vivint, Inc.*

**PRODUCT DEVELOPMENT AND  
SUPPLY AGREEMENT**

**Between**

**VIVINT, INC.**

**and**

**VIVINT SOLAR DEVELOPER, LLC**

**Dated as of September 30, 2014**

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## PRODUCT DEVELOPMENT AND SUPPLY AGREEMENT

This PRODUCT DEVELOPMENT AND SUPPLY AGREEMENT (this “*Agreement*”) is entered into as of September 30, 2014 (“*Effective Date*”), by and between VIVINT SOLAR DEVELOPER, LLC, a Delaware limited liability company (“*Vivint Solar*”), and VIVINT, INC., a Utah corporation (“*Vivint*”). Vivint Solar and Vivint are referred to herein individually as a “*Party*”, and collectively as the “*Parties*”.

### RECITALS

WHEREAS, Vivint Solar and Vivint are affiliate business entities, under the common control and ownership of 313 Acquisition, LLC, a Delaware limited liability company.

WHEREAS, the Parties have been operated as an interrelated business enterprise, but are undertaking to separate their operations.

WHEREAS, Vivint Solar and its Affiliates develop solar photovoltaic electric energy generation projects for residential and commercial customers (each, a “*Project*”).

WHEREAS, Vivint provides certain services relating to home automation, security, energy management solutions, internet services and data storage, retrieval, access and security products and services to residential and commercial customers (“*Vivint Services*”), and, in connection therewith, installs certain monitoring and communications equipment including the Sky Panel and other equipment as specified on Exhibit A-1, as amended during the Term (collectively, the “*Monitoring and Communications Equipment*”).

WHEREAS, as of the Effective Date, Vivint Solar purchases proprietary equipment from third parties in order to monitor, collect and communicate performance data from its Projects for billing and other purposes, along with related data services.

WHEREAS, the Parties agree that it may be in their mutual best interests to further develop the Monitoring and Communications Equipment’s functionality so that it has compatible and/or similar capabilities as certain equipment Vivint Solar purchases from third parties and for Vivint to perform similar data services for Vivint Solar and that they would benefit from cross-selling opportunities arising out of the increased use and installation of the Products, as so developed for use in Vivint Solar Projects.

WHEREAS, the Parties desire to set forth the terms and conditions upon which (i) they may elect to proceed with developing the Products, and (ii) Vivint Solar will use commercially reasonable efforts to purchase, and in which case, Vivint would sell, the Products and provide the Services.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

#### ARTICLE 1 DEFINITIONS AND GENERAL PROVISIONS

1.1 **Definitions and Rules of Interpretation** . Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in Schedule 1.

1.2 **Term** . Unless terminated earlier as provided in this Agreement, the term of this Agreement will commence on the Effective Date and shall continue until the third (3<sup>rd</sup>) anniversary of the Effective Date (“*Initial Term*”). The Initial Term shall automatically renew for successive one (1) year periods (each, a “*Renewal Term*” and together with the Initial Term, the “*Term*”) unless this Agreement is terminated pursuant to its terms or a Party receives written notice from the other Party no less than three (3) months prior to the end of the Initial Term or a Renewal Term, as applicable, specifying that the sending Party is declining to renew this Agreement.

PRODUCT DEVELOPMENT AND SUPPLY AGREEMENT  
*Vivint Solar, Inc. and Vivint, Inc.*

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**ARTICLE 2  
PRODUCT DEVELOPMENT**

2.1 **Product Development Activities** . The Parties shall use commercially reasonable efforts develop the Products, including performing in good faith their respective Product Development Activities as detailed further in Exhibit A. The Parties may amend or restate Exhibit A from time to time pursuant to Section 19.7 as they refine or modify such Product Development Activities. When and if Vivint Solar determines that the Product Development Activities have been sufficiently completed, including such testing and debugging of the Products as the Parties shall undertake as part of the Product Development Activities, that Vivint Solar desires to commence ordering Products under this Agreement, Vivint Solar shall provide written notice of such determination (“*Notice of Acceptance*”). Notwithstanding Vivint Solar’s delivery of a Notice of Acceptance and purchase of Products, the Product Development Activities may continue as the Parties mutually deem necessary or appropriate.

2.2 **Project Management** . Each Party will designate a single point of contact within its organization to manage that Party’s respective Product Development Activities (each, a “*Development Project Leader*”), and the Development Project Leaders designated by each Party as of the Effective Date are set forth in Exhibit A. The Development Project Leaders will meet as necessary to manage the Product Development Activities. Vivint’s Development Project Leader will provide Vivint Solar’s Development Project Leader with reports on the status of the Product Development Activities at least once every calendar quarter during the Term.

2.3 **Product Designs; Vivint Solar Materials** . In connection with the design work conducted by it, Vivint will consider and use commercially reasonable efforts to incorporate Vivint Solar’s recommendations based on existing Vivint Solar designs and any improvements developed by Vivint Solar. Subject to the terms and conditions of this Agreement, Vivint Solar hereby grants to Vivint and its permitted successors and assigns an irrevocable, limited, non-exclusive, non-sublicensable, non-assignable and non-transferable (except as permitted under Section 19.3), fully paid-up, royalty-free, worldwide right and license to use (i) the Vivint Solar Background IP and New Vivint Solar Developments and (ii) any materials, information, data, designs, software, or other technology provided or made available by Vivint Solar (“*Vivint Solar Materials*”), in each case solely to perform the Product Development Activities and otherwise as required to fulfill its obligations under this Agreement. The Vivint Solar Materials are Vivint Solar’s Confidential Information.

2.4 **Fees for Vivint’s Product Development Activities** . Vivint Solar shall pay Vivint for Vivint’s Fully Loaded Costs it incurs in connection with Vivint’s performance of its Product Development Activities, without markup. Vivint shall invoice Vivint Solar quarterly the amounts payable pursuant to this Section 2.4, and Vivint Solar shall pay such invoices within thirty (30) days after the invoice date.

**ARTICLE 3  
PRODUCT SUPPLY**

3.1 **Purchase Orders** .

3.1.1 Generally . Subject to developing the Products to work with Vivint Solar Projects pursuant to Article 2, Vivint Solar will use commercially reasonable efforts to purchase and deploy such Products in connection with Vivint Solar Projects. The provisions of this Agreement shall apply to all Purchase Orders placed by Vivint Solar during the Term for the purchase of the Products. All purchases of Products under this Agreement will be subject only to the terms and conditions of this Agreement. If the terms of any Purchase Order (other than as required by Section 3.1.3), acknowledgment, invoice, confirmation, or similar document conflict with the terms and conditions of this Agreement, the terms of this Agreement will govern.

3.1.2 Forecasts . Simultaneously with its delivery of the Notice of Acceptance, Vivint Solar will submit to Vivint a 12-month forecast of Products it reasonably projects it will order during such 12-month period (the “*12-Month Forecast*”). Vivint Solar will update the 12-Month Forecast on a rolling basis no later than the fifth (5<sup>th</sup>) Business Day of each following calendar month. Vivint will have the option, at its discretion, to extend the shipment date as reasonably necessary to fulfill the excess portion of any Purchase Order that exceeds one hundred ten percent (110%) of the quantity of Products in the 12-Month Forecast for the period covered by such Purchase Order. At all times during the Term, Vivint Solar shall submit, during or covering such month, Purchase Orders for no fewer than 90% of the Products included in the 12-Month Forecast for such month as such forecast was provided for such month 120 days prior to such month (i.e., Vivint Solar must submit a Purchase Order for any month of the forecast for no fewer than 90% of the Products that were forecast for such month in the 12-Month Forecast delivered 120 days before the first business day

of such month). Subject only to this Section 3.1.2, Vivint Solar's submission of Purchase Orders is in its sole discretion and that this Agreement does not impose a minimum purchase obligation on Vivint Solar.

3.1.3 Submission and Acceptance of Purchase Orders. At any time during the Term, and pursuant to the terms and subject to the conditions of this Agreement, Vivint Solar may submit Purchase Orders to Vivint for Products. All Purchase Orders shall be submitted by electronic mail sent to Vivint's Representative for Purchase Orders and, subject to Section 3.1.4, shall comply with the Required Lead Time. Each Purchase Order delivered by Vivint Solar shall:

- (a) Identify the Products being ordered, including the model name and Product number set forth in Exhibit A-1;
- (b) the applicable quantity of each type of Product being ordered (" *PO Product Quantity* ");
- (c) the Delivery Schedule; and
- (d) the applicable Unit Price for such Products determined in accordance with Section 4.1 and Exhibit A-1.

Within five (5) Business Days after receipt, Vivint shall accept and acknowledge in writing all Purchase Orders submitted by Vivint Solar except those that (i) do not conform to this Agreement, or (ii) are for a Rush Order when there is insufficient buffer inventory. If within such time period Vivint neither so accepts such Purchase Order nor rejects such Purchase Order in writing pursuant to clauses (i) and (ii) above, with a reasonably detailed explanation for the basis of such rejection, the Purchaser Order shall be accepted for purposes of this Agreement. If Vivint rejects a Purchase Order for one or both of the reasons described in pursuant to clauses (i) and (ii) above, it shall not be accepted. Upon acceptance of a Purchase Order by Vivint, and on the terms and subject to the conditions set forth in this Agreement, Vivint Solar must purchase such Products from Vivint, and Vivint must sell and deliver to Vivint Solar such Products at the Delivery Point in accordance with the applicable Purchase Order, the Delivery Schedule, and the terms and conditions of this Agreement.

3.1.4 Rush Orders. If Vivint Solar submits a Purchase Order with a Delivery Schedule that does not allow for the Required Lead Time (a " *Rush Order* "), and Vivint accepts such Purchase Order, Vivint shall use commercially reasonable efforts to fill any such Rush Order, including using the buffer inventory maintained pursuant to Section 7.1, if any, to fulfill any such Rush Order. Vivint may increase the Unit Price of each Product that is subject to a Rush Order by ten percent (10%). Notwithstanding anything in this Section 3.1.4, Vivint shall be under no obligation to accept a Rush Order if the PO Product Quantity exceeds the buffer inventory of the ordered Products, if any, maintained pursuant to Section 7.1 as of the first Scheduled Ship Date proposed by Vivint Solar under such Purchase Order.

3.1.5 Changes to Destination Point. Notwithstanding anything in a Purchase Order or associated Delivery Schedule, Vivint Solar may revise the Destination Points in any Delivery Schedule provided such revision is delivered in writing to Vivint no later than five (5) days prior to the applicable Scheduled Ship Date for such installment of Products. Any increases in costs charged by the Carrier(s) relating to such change shall be paid by Vivint Solar in accordance with Section 5.1.2.

3.2 **Installation of Products**. During the Term: (a) Vivint Solar will use Good Faith Efforts to install Products in residences at which Vivint Solar installs a Project and correspondingly purchase such Products from Vivint under this Agreement; and (b) Vivint will use Good Faith Efforts to install Products that have been developed in connection with the Product Development Activities in each residence at which it performs Vivint Services. For purposes of this Section 3.2, " *Good Faith Efforts* " means that the Party charged with taking such actions shall (i) make a good faith assessment of the quality, features, functions, performance technological sophistication, cost and other operational attributes of the Products, and (ii) determine, based on the assessment referred to in clause (i), whether to install the Products, in the case of Vivint Solar, in its Projects, and in the case of Vivint, in residences where it performs Services, provided that if, based on the assessment referred to in clause (i) above, the Products are materially equivalent to any other product offered by any third party, Good Faith Efforts shall require the relevant Party to install Products rather than such other product.

3.3 **Right to Use the Products Following Installation**. Following Vivint Solar's installation of a Product in connection with a Project, Vivint shall have the right to access and use such Product in the future in connection with its provision of Vivint Services at the same location so long as: (a) Vivint pays Vivint Solar a one-time payment equal to fifty percent (50%) of the original Unit Price of such Product, whether through a single payment to Vivint Solar or a credit against future amounts due by Vivint Solar (at Vivint Solar's option) and which shall be in addition to any other consideration payable by Vivint to Vivint Solar under other

Contracts between the Parties; (b) such use does not interfere with Vivint Solar's use of the Product or the Services provided by Vivint to Vivint Solar; and (c) title to the Product is vested in Vivint Solar. If Vivint installs a Product in connection with its provision of the Vivint Services, Vivint Solar shall have the right to access and use such Product if Vivint Solar later installs a Project at the same location so long as so long as: (i) Vivint Solar pays Vivint a one-time payment equal to fifty percent (50%) of the original Unit Price of such Product, in a single payment to Vivint and which shall be in addition to any other consideration payable by Vivint Solar to Vivint under other Contracts between the Parties; and (ii) such use does not interfere with Vivint's use of such Product or Vivint's provision of the Vivint Services at such location. The payments set forth in this Section 3.3 are in addition to any fees or other amounts payable under the Marketing Services Agreement.

## ARTICLE 4 UNIT PRICE AND PAYMENT TERMS

### 4.1 Unit Price .

4.1.1 Unit Price and Contract Amount . The unit price for each Product shall be as set forth in Exhibit A-1 (the "**Unit Price**"), as may be modified pursuant to Section 4.1.2 . All Unit Prices are F.C.A. Vivint's Facility (INCOTERMS 2010) and are subject to the inclusions and exclusions specified in Section 4.2 .

4.1.2 Unit Price Modification . Upon Vivint Solar's delivery of the Notice of Acceptance and thereafter on each anniversary of the date on which the first Purchase Order for Products is issued by Vivint Solar and that is accepted by Vivint (each, the "**Initial Purchase Order Anniversary**"), the Unit Price shall be adjusted (up or down) for the upcoming year to an amount equal to the Fully Loaded Costs incurred by Vivint for such Product as of the date of such Initial Purchase Order Anniversary. Such adjustments to the Unit Price shall apply to Products purchased under Purchase Orders issued by Vivint Solar after the applicable Initial Purchase Order Anniversary. No later than thirty (30) days prior to each Initial Purchase Order Anniversary during the Term, Vivint shall provide Vivint Solar with the adjusted Unit Price along with reasonable supporting documentation to justify its determination of such adjustment (whether up or down). The Parties agree that Vivint shall use the same method for calculating the adjusted Unit Price as it used to calculate the Unit Price in Exhibit A-1 as of the Effective Date. Vivint Solar shall notify Vivint no later than twenty (20) days prior to the applicable Initial Purchase Order Anniversary if it has a good faith objection to Vivint's calculations or methodology, and the Parties shall promptly meet and work to resolve any disagreements in in good faith prior to the applicable Initial Purchase Order Anniversary. Should the Parties fail to resolve any dispute by the Initial Purchase Order Anniversary, Vivint's adjustment to the Unit Price shall nevertheless apply to Products purchase under Purchase Orders issued by Vivint Solar after the applicable Initial Purchase Order Anniversary, the Parties acknowledging that Vivint Solar has no obligation to issue such Purchase Orders.

4.2 Inclusions and Exclusions from Unit Prices . The Unit Prices include all (a) Product packaging, (b) licensing fees, royalties and similar charges, (c) labor and other internal overhead costs incurred by Vivint in making transportation arrangements pursuant to Section 5.1.2, (d) all Warranties, and (e) all Basic Services. Vivint Solar will be solely responsible for the payment of all applicable sales or use Taxes that accrue in connection with the purchase of the Products under this Agreement (except Taxes included in Carriers' invoices relating to shipping), and will indemnify Vivint from damages resulting from the failure to make these payments. Vivint shall provide Vivint Solar with reasonable assistance in determining amounts payable for sales or use Taxes, provided such assistance does not result in Vivint incurring out-of-pocket costs to third parties. The Unit Prices exclude all transportation charges payable by Vivint Solar pursuant to Section 5.1.2, and such amounts relating to each shipment shall be listed as a separate line item on the Invoice accompanying the shipment pursuant to Section 4.3 .

4.3 Invoices and Payment . Vivint will invoice Vivint Solar with each shipment (each, an "**Invoice**"). Payment terms will be the full invoiced amount payable within thirty (30) days after the Invoice date (i.e., net 30 payment terms) (each, a "**Payment Date**"). Vivint will submit Invoices electronically on the Delivery Date. Vivint Solar may, in good faith, dispute such Invoice by providing Vivint with written notice identifying the basis for such dispute, and the Parties shall work in good faith to promptly resolve any dispute prior to the Payment Date; *provided, however*, if a dispute regarding amounts set forth in an Invoice is ongoing, Vivint Solar shall nevertheless pay such disputed amounts by the Payment Date unless Vivint Solar otherwise rightfully rejects Products that form the basis of the Payment Dispute prior to the Payment Date. Any payment disputes not resolved as of the applicable Payment Date shall be resolved in accordance with the dispute resolution provisions in Article 16 .

4.4 Late Payments . Any amount not paid by a Party when due under this Agreement shall accrue interest at the Late Payment Rate beginning on the date that is five (5) Business Days after the applicable Payment Date and continuing until paid in full

unless later determined that amounts on which interest is being charged were charged by Vivint in error. Additionally, if Vivint Solar is more than ten (10) days delinquent in any payment obligation to Vivint when and as due under this Agreement, Vivint may upon written notice to Vivint Solar (i) decline to accept Purchase Orders issued by Vivint Solar as of such date until all delinquent amounts and interest are paid in full, (ii) recover all costs of collection including, but not limited to, reasonable attorneys' fees; and (iii) upon Vivint Solar's breach of this Agreement pursuant to [Section 13.1.1](#), and in addition to any rights and remedies set forth in [Section 13.2](#), suspend its performance under any Purchase Order and withhold future shipments until all delinquent amounts, interest and collection costs are paid in full; *provided, however*, notwithstanding any payment default, Vivint shall in no event suspend the Services or performance of its warranty obligations in connection with Products that have been delivered to Vivint Solar as of such date.

4.5 **Payments Not Acceptance of Products**. No payment made hereunder shall be considered or deemed to represent that Vivint Solar has inspected the Products or checked the quality or quantity thereof and shall not be deemed or construed as approval or acceptance of any Products, or as a waiver of any claim or right that Vivint Solar may then or thereafter have, including any warranty right. Acceptance of Products shall only occur as set forth in [Section 5.2.2](#).

4.6 **Set-Off**. Vivint Solar may set-off against amounts Invoiced by Vivint any amounts either (a) agreed by Vivint to be due to Vivint Solar, or (b) determined by a non-appealable order of a court of competent jurisdiction to be due to Vivint Solar, in either case as a result of: (i) a failure of any Product to comply with the applicable Specification, the applicable Purchase Order, or any other requirement set forth in this Agreement; (ii) third party Actions for Losses filed or threatened to be filed (including any Encumbrances) relating to Vivint; (iii) the occurrence of an Event of Default set forth in [Section 13.1](#); (iv) any other amounts payable by Vivint to Vivint Solar under this Agreement. Failure or forbearance on the part of Vivint Solar in off-setting any amounts against Vivint shall not be construed as accepting or acquiescing to any performance or non-performance, including any disputed claims or amounts.

## ARTICLE 5 DELIVERY, ACCEPTANCE AND REJECTION, TITLE AND RISK OF LOSS

### 5.1 Delivery of Products, Shipment Protocol and Packaging.

5.1.1 **Delivery**. All Products purchased by Vivint Solar and sold by Vivint under Purchase Orders shall be delivered by Vivint to Vivint Solar F.C.A. Vivint's Facility (INCOTERMS<sup>®</sup> 2010) ("**Delivery Point**") in accordance with this [Article 5](#) and the Scheduled Ship Dates set forth in the applicable Delivery Schedule. Vivint acknowledges and agrees that time is of the essence with respect to each delivery of Products to the Delivery Point. If Vivint causes the delivery of Products to occur at a location other than the Delivery Point without Vivint Solar's written consent, Vivint Solar shall only be responsible for paying the average shipping-related costs (on a per Product basis) that Vivint Solar was charged for shipments from the Delivery Point to the same Destination Point(s) in the prior three (3) calendar months.

5.1.2 **Transportation Arrangements**. Vivint shall be responsible for making all transportation arrangements with Carriers in order to ship such Product from the Delivery Point to the Destination Point, including unloading the Products at the Destination Point, all in accordance with the applicable Delivery Schedule, the Shipment Protocol, and the other provisions of this [Section 5.1](#). All costs and expenses charged by Carriers to Vivint shall be passed through to Vivint Solar, without markup, on the applicable Invoice delivered with shipment of the Products. The Unit Price includes all internal Vivint personnel time spent performing such scheduling and arrangement services. If Vivint Solar requires Vivint to cancel its transportation arrangements with a Carrier for any reason or requests expedited or premium shipping, then Vivint Solar shall be responsible for cancellation charges or additional premium charges incurred by Vivint; *provided, however*, Vivint shall be responsible for any premium shipping charges related to late delivery of a Product. Vivint shall use commercially reasonable efforts to use Carriers that have industry standard liability insurance, and Vivint shall notify Vivint Solar of Carriers it intends to use in advance of first retaining such Carriers so that Vivint Solar can verify insurance coverage. At any time during the Term, upon written notice, Vivint Solar may (a) request that Vivint not use a Carrier based on deficient insurance coverage (with any cancellation charges being reimbursed by Vivint Solar); and (b) assume responsibility for transportation arrangements, and the Parties will work together in good faith to ensure a seamless transition of responsibilities.

(a) **Documents of Title**. Vivint shall provide the Carrier with a bill of lading, bill of sale or other document of title when the Products are delivered to the Carrier at the Delivery Point.

(b) Packing List . Vivint shall provide an itemized list of all Products delivered to a Carrier for each shipment (which may include multiple trucks) in order to validate the quantity and type of Products delivered. The packing list must include (i) the Purchase Order number, (ii) the model name and Product number, and (iii) the quantity of each Product so shipped.

5.1.3 Packaging . Vivint shall package, mark and handle all of the Products and shipping containers in accordance with prudent commercial practices in the United States manufacturing industry and Vivint's standard practices.

5.1.4 Importer of Record . As between Vivint and Vivint Solar, Vivint shall be the "importer of record" with respect to all Products and raw materials composing such Products.

5.1.5 Shipment Protocols . Vivint shall cause the Carriers to comply with any reasonable protocols for delivery of Products at the Destination Point that Vivint Solar provides to Vivint within a reasonable period of time prior to the Scheduled Ship Date (the "Shipment Protocols"), including receiving hours, restrictions on the Carrier's vehicle size, etc. Any special Shipment Protocols that result in Carriers adding or increasing charges to Vivint shall be payable by Vivint Solar pursuant to Article 4 and Section 5.1.2.

5.1.6 Early Deliveries . Vivint Solar reserves the right to refuse delivery of any quantity of Products more than that specified in its Purchase Order and any deliveries to the Destination Point(s) made more than five (5) days in advance of the Delivery Date specified for such Products. Vivint Solar may return, freight collect, all Products received prior to such date or in excess of the quantity specified in the applicable Purchase Order, or may, at its option, retain such Products with payment deferred until it would otherwise be due as though the Invoice was submitted on the original Scheduled Ship Date.

## 5.2 **Rejection of Products and Acceptance** .

### 5.2.1 Rejection of Products .

(a) Inspection . Vivint Solar shall inspect the Products within five (5) days after arrival of the Products at the Destination Point.

(b) Rejection . Notwithstanding anything to the contrary in this Agreement or applicable Laws that may be altered by contract (including, without limitation, Utah Code § 70A-2-602(1)), Vivint Solar or its representatives may, by notice to Vivint pursuant to Section 5.2.1(c), reject any non-conforming Product or shipments of Products up to the earlier of: (i) commencement of installation of the Product; or (ii) ten (10) days following the Delivery Date. If Vivint Solar rejects any Product, Vivint Solar shall promptly return the rejected Products to Vivint (at Vivint's expense), whereupon Vivint must either (at Vivint's option) (A) refund any amounts paid by Vivint Solar for such rejected Product, or (B) replace the rejected Product at Vivint's sole cost and expense (including shipping and transportation costs for returning the rejected Product from its then-current location and shipping the replacement Product to the Destination Point nominated by Vivint Solar) within thirty (30) days after receiving Vivint Solar's written notice of rejection.

(c) Notice of Rejection . Vivint Solar's notice of rejection shall include (i) a description of the reason(s) for the rejection, and (ii) if applicable, of the damage or defect to the Product.

5.2.2 Acceptance . Any Products not rejected in accordance with Section 5.2.1 shall be deemed accepted by Vivint Solar; *provided* , that such deemed acceptance shall not affect any right or remedy available pursuant to the Warranty applicable to the Product regardless of whether such right or remedy is exercised by Vivint Solar or by any assignee or transferee. Once accepted, any defects discovered in a Product shall be resolved pursuant to the terms and conditions of the applicable Warranty. Delivery of a Product to the Carrier at the Delivery Point, or receipt by Vivint Solar of a Product at the Destination Point, shall in no event be construed as Vivint Solar's acceptance of the Product.

5.3 **Transfer and Warranty of Title** . Subject to Article 8 , title to each Product shall pass from Vivint to Vivint Solar or Vivint Solar's designee at the Delivery Point when such Products have been loaded on the Carrier's means of transport. Vivint warrants good title to all Products furnished hereunder, and Vivint represents that, when title to a Product passes to and vests in Vivint Solar or its designee as described in this Section 5.3 , such Product shall be free and clear of any and all Encumbrances including any purchase money security interest or right of Vivint to perfect any such security interest in the Products. To the greatest extent permitted by Law, Vivint hereby waives any right it has to assert a security interest in the Products or to perfect such right, and Vivint covenants that it shall not file any U.C.C. financing statements asserting a security interest in the Products. For the avoidance of doubt,

transfer of title to Products hereunder shall not affect Vivint Solar's rights or Vivint's obligations as set forth in other provisions of this Agreement (including [Article 5](#), [Article 9](#) and [Article 11](#)).

#### 5.4 No Encumbrances .

5.4.1 No Vivint Encumbrances; Removal. Vivint shall not permit or suffer to exist any Encumbrance, including an Encumbrance of any Person claiming by, through or under Vivint, its subcontractors, vendors or any Affiliate thereof, upon the Products after passage of title (except for any Encumbrance securing payment for such Product arising by operation of law which shall be released pursuant to [Section 5.4.3](#)), any Project incorporating such Products, or other property of Vivint Solar, any Person to whom Vivint Solar has assigned or otherwise transferred Products, or the real or personal property of a customer hosting a Project (each, a "**Vivint Encumbrance**"). If any such Vivint Encumbrance is imposed or asserted, Vivint shall promptly pay or discharge and discharge of record any such Vivint Encumbrance or other charges which, if unpaid, might be or become a Vivint Encumbrance.

5.4.2 Vivint Solar Right to Remove. Upon the failure of Vivint to timely discharge or cause to be released any Vivint Encumbrance as required under [Section 5.4.1](#), Vivint Solar may, but shall not be obligated to, pay, discharge or obtain a surety bond for such Vivint Encumbrance. Upon such payment, discharge or posting of surety bond, Vivint Solar shall be entitled to, at its option, set off such amounts together with all out-of-pocket expenses reasonably incurred by Vivint Solar in connection with such payment, discharge or posting pursuant to [Section 4.6](#) or submit an invoice to Vivint for reimbursement of all such amounts.

5.4.3 Security Interests Created by Operation of Law. If an Encumbrance attaches to the Products in favor of Vivint by operation of Law to secure payment for the Products, to the greatest extent permitted by applicable Law, such Encumbrance with respect to one Product shall not apply to any other Product, and payment in full for one Product shall serve to release such Encumbrance. There shall be no cross-collateralization of the Products.

5.5 **Risk of Loss** . Subject to [Article 8](#), care, custody and control of the Products, and risk of loss to the Products, shall transfer from Vivint to Vivint Solar at the Delivery Point when such Products have been loaded on the Carrier's means of transport.

### ARTICLE 6 PRODUCT SPECIFICATIONS, ENGINEERING CHANGES AND INSPECTIONS

6.1 **Specifications** . Vivint shall supply Products that conform to the applicable Specifications, all Warranties and the other requirements of this Agreement.

#### 6.2 Modifications to Existing Products .

6.2.1 Generally. Vivint shall provide written notice to Vivint Solar at least thirty (30) days prior to making any hardware, software or firmware modifications to a Product. Vivint shall not make any changes to any Product and for any reason reasonably would be foreseen to have an adverse effect on the functionality of the Product without first obtaining Vivint Solar's written consent. Upon Vivint Solar's agreement to such modifications, the Parties will amend [Exhibit A-1](#) to substitute the modified Specifications for the obsolete Specifications resulting from any such modification. Notwithstanding the foregoing provisions of this [Section 6.2.1](#), without prior notice to Vivint Solar, Vivint may make any modification to any Product that is required to be made by any Governmental Authority, or that Vivint reasonably determines to be necessary in connection with a voluntary safety recall of the Products or otherwise for consumer safety considerations, provided that Vivint promptly thereafter provides written notice of such modification to Vivint Solar.

6.2.2 Costs of Changes . All modifications to a Product will be implemented at the sole expense of Vivint, unless the modification is (i) requested by Vivint Solar, or (ii) the defect or nonconformity necessitating the modification is the fault of Vivint Solar in providing defective functional specifications for Products, in which events Vivint Solar shall be responsible for the reasonable expenses of such modification, including a reasonable allocation of labor and overhead.

6.3 **New Products** . In connection with its Product Development Activities, Vivint shall keep Vivint Solar informed of any new Products or improvements to the Sky Panel as it exists as of the Effective Date or improved Products after the Effective Date. Vivint Solar will notify Vivint in writing if it wishes to add the new products to this Agreement. If Vivint Solar agrees, the Parties will proceed to amend [Exhibit A-1](#) to establish new or revised Unit Prices (which the Parties agree shall be consistent with Vivint's fully-burdened cost to produce such new Products), add model names and numbers, and add new Specifications. Following amendment of

Exhibit A-1, the new products will be considered Products under this Agreement and will be purchased and sold under the terms and conditions of this Agreement.

6.4 **Manufacturing Facility Inspections** . Vivint Solar, at Vivint Solar's sole cost and expense, shall have the right (but not the obligation) to inspect Vivint's Manufacturing Facility, including inspection of the production of the Products at Vivint's Manufacturing Facility, upon at least five (5) Business Days prior notice. Vivint shall make available to Vivint Solar a representative of Vivint to answer questions and demonstrate the quality control procedures at Vivint's Manufacturing Facility or Vivint's Facility, as applicable.

6.5 **Discovery of Defects; Corrective Actions** . If any inspection or testing by Vivint Solar indicates that any of the Products that have been identified for shipment to Vivint Solar are defective and/or do not comply with the Specifications, the applicable Purchase Order, the applicable Warranty, or any other requirement set forth in this Agreement, Vivint Solar shall notify Vivint of such defect or non-compliance, and Vivint shall implement all necessary actions to ensure that the Products to be shipped to Vivint Solar in accordance with this Agreement and the Purchase Orders comply with the Specifications, the applicable Purchase Order, the applicable Warranty, or such other applicable requirement set forth in this Agreement.

6.6 **Inspections Not Waiver** . Nothing in this Article 6 relating to any inspections or quality control tests undertaken with respect to Products, including any required replacement of Products that do not pass such inspection or testing, shall operate to relieve Vivint's obligations to deliver the Products on a timely basis or to limit Vivint Solar's termination rights pursuant to Article 13 .

6.7 **Application to Suppliers and Contract Manufacturers** . Vivint shall ensure that any contract manufacturer or supplier it uses to manufacture the Products provides Vivint Solar the same rights and is subject to the same obligations as set forth in this Article 6 .

## ARTICLE 7 SUPPLY CONTINGENCIES

7.1 **Buffer Inventory** . Vivint will maintain a buffer inventory in accordance with the terms and conditions of Exhibit C .

7.2 **Allocation** . Vivint will use its best efforts to maintain the ability to supply all Products that Vivint Solar orders from Vivint. If the supply of any Product, to Vivint's knowledge, will be adversely affected for any reason, Vivint Solar's orders, subject to normal lead-time requirements, will be filled according to an allocation plan no less favorable than that provided to any other Vivint customer (including Affiliates or customers of the Vivint Services). Vivint will provide Vivint Solar with as much notice as possible if it anticipates or has reason to believe that Vivint's output of the Products will not be sufficient to meet all of Vivint Solar's requirements as set forth in issued Purchase Orders.

7.3 **Discontinuance** . During the Term, Vivint shall not discontinue production of a Product that has been developed as part of the Product Development Activities without Vivint Solar's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE 8 TRANSFER OF OWNERSHIP OF PRODUCTS AND DATA

8.1 **Transfer of Products** . Title to the Products ordered under a Purchase Order shall be freely transferrable by Vivint Solar to any other Person holding title to the System in which the Product is installed without notice to or the consent of Vivint.

8.2 **Transfer of Data** . For clarity, upon transfer of any Products pursuant to Section 8.1, all right, title and interest in and to the Data relating to such Products (whether then generated or generated in the future) shall pass to, vest in, and thereafter be owned by the owner of the System.

8.3 **Effect of Transfer; Acknowledgement of Agency** . Following transfer of a Product subject to Sections 8.1 and 8.2, Vivint acknowledges and agrees that any obligations it has to Vivint Solar under this Agreement with respect to the transferred Products and Data it shall have towards the Person having title to the Products and Data, and any rights that Vivint Solar has under

this Agreement with respect to such Product(s) and Data are assumed by such Person having title to the Products and Data. No transfer of title to Products and Data shall serve to increase, diminish or otherwise modify the rights or obligations set forth in this Agreement with respect to such Products and Data, including, without limitation, the Warranties and Vivint's obligation to perform the Services relating to such Products and Data, and Vivint shall continue to support the Product for the owner of the System as though Vivint Solar requested such support under this Agreement. Without limiting Section 9.2, Vivint acknowledges that, unless otherwise informed by the transferee of the Product and System in writing, Vivint Solar will be serving as the agent of any such transferee with full power and authority to, on behalf and for the benefit of such transferee, exercise all rights of the transferee under this Agreement relating to such transferred Products and Data and demand performance of all obligations of Vivint relating to such transferred Products and Data as though Vivint Solar remained owner of the Products and Data under this Agreement.

8.3.1 Vivint's Use of Data Following Transfer. Following transfer of the Data pursuant to Section 8.2, Vivint Solar agrees, represents and covenants that Vivint's rights to use and disclose such Data shall continue to be as set forth in Sections 18.4.2 and 18.4.3, and Vivint Solar shall procure all necessary agreements to ensure same.

## ARTICLE 9 WARRANTIES

9.1 **Warranty**. Vivint hereby provides the Warranties with respect to the Products supplied pursuant to this Agreement; *provided*, that nothing in the Warranties (including, without limitation, the disclaimer) shall be read or deemed to limit Vivint's obligations or Vivint Solar's rights as expressly set forth in this Agreement. The "**Product Warranty Period**" for the Products purchased under a Purchase Order is as set forth in the Product Warranty.

9.2 **Warranties Transferable**. The Warranties shall be freely transferable by Vivint Solar, without notice to or consent of Vivint, to any subsequent owner of the Products at the original site of installation, including, without limitation, Financing Parties providing tax equity financing for the applicable Project in which the warranted Product is installed. Notwithstanding any such transfer, Vivint Solar shall be a joint beneficiary of the Warranties supplied hereunder and shall have the same rights as any transferee, on behalf of such transferee, to make claims and obtain service, recoveries and other remedies under the Warranties with respect to the applicable Products; *provided*, that under no circumstance shall both Vivint Solar and the applicable transferee be entitled to make claims and obtain service, recoveries and other remedies with respect to the same claim, defect or similar issue with respect to such Products.

9.3 **Vivint Solar's Performance of Warranty Work**. Vivint Solar, itself or through others, may (but is not required to) at its own cost and expense replace any Defective Product with an equivalent Product that Vivint Solar has purchased from Vivint if: (a) Vivint has failed to commence its curative obligations under the Product Warranty within fifteen (15) days of being notified of a Defective Product pursuant to the Product Warranty; (b) after the fifteen (15) day period elapses, Vivint Solar notifies Vivint of its intent to cure and provides an additional period of no less than five (5) days for Vivint to commence its curative obligations under the Product Warranty and either Vivint fails to commence such work or notify Vivint Solar of reasonable reasons for such delay (e.g., replacement Products or components thereof are unavailable within such time period); and (c) such defect in the Defective Product relates to hardware and can be resolved by replacement with another Product. In addition, Vivint Solar may (but is not required to) replace any Defective Product with an equivalent Product if Vivint requests in writing that Vivint Solar perform such replacement in order to satisfy Vivint's warranty obligations. If Vivint Solar replaces the Defective Product with Vivint Solar's own stock pursuant to this Section 9.3, (i) Vivint Solar shall bear the costs of removal of the Defective Product and installation of the replacement Product, and (ii) Vivint shall supply a replacement Product with its next shipment of Products to Vivint Solar at no cost to Vivint Solar. Any warranty work performed by Vivint Solar under this Section 9.3 shall be deemed performed by Vivint and, in the absence of Vivint Solar's or its contractor's gross negligence, shall not operate to void the Product Warranty.

## ARTICLE 10 SERVICES AND SUPPORT

10.1 **Services**. Vivint shall perform the Services for Vivint Solar (or any transferee of the Products, including, without limitation, a Financing Party providing tax equity financing) commencing on the Delivery Date of such Product and continuing for so long as such Product, including any replacements to the originally installed Products in connection with Vivint's performance of Warranty work or in connection with a Product Hardware Upgrade, remains installed in connection with the original Project (the "**Services Period**"). Consideration for the Basic Services is included in the Unit Price of the Products and shall not be separately

charged by Vivint. Consideration for the Supplemental Services is set forth in Exhibit E. The obligations of Vivint to perform the Basic Services, and rights granted to Vivint Solar to have such Basic Services performed by Vivint shall survive any termination, cancellation or expiration of this Agreement; *provided, however*, Vivint shall have no further obligation to perform the Basic Services with respect to one or more Products for which Vivint Solar did not pay the Unit Price.

**10.2 Standard of Performance and Services Warranty; Control of Services** . Vivint shall (itself or through others) perform the Services, and hereby warrants that all Services will be performed, in a timely, good and workmanlike manner, and all Services shall be performed, and all work, documentation, and instruments of service to be supplied by Vivint to Vivint Solar in connection with the Services shall be in compliance with all applicable Laws, the covenants, representations and warranties (including the Product Warranty) and other requirements in this Agreement, and Prudent Industry Practices (“*Services Warranty*”). If the Services or any deliverables fail to meet the foregoing Services Warranty and such failure is discovered at any time during the Services Period (“*Services Warranty Period*”), promptly following notice of such defect or nonconformity from Vivint Solar (or any transferee of the Product, including, without limitation, a Financing Party providing tax equity financing), Vivint shall, at Vivint’s sole cost and expense, promptly re-perform or otherwise correct any failure of the Services or such deliverables to meet the Services Warranty.

**10.3 Control of Services** . Vivint shall be solely responsible for all means, methods, techniques, sequences, procedures, and safety programs in connection with its performance of the Services. Except as expressly set forth in this Agreement, Vivint Solar does not have authority over, the right to control, or the responsibility for supervision of Vivint’s or any of its subcontractors’ personnel.

**10.4 Waivers and Releases of Encumbrances** . If Vivint has retained subcontractors to perform any of the Services, upon Vivint Solar’s request, Vivint shall tender to Vivint Solar, in a form complying with applicable Law, waivers and releases of Encumbrances (conditioned only upon Vivint’s payment to such subcontractors) from such subcontractors and any unconditional waivers and releases of Encumbrances within ten (10) days following Vivint’s payment of all amounts due to subcontractors.

## ARTICLE 11 INDEMNIFICATION AND INSURANCE

**11.1 Vivint’s General Indemnity** . Vivint shall defend, indemnify and hold harmless Vivint Solar, its Affiliates and its Financing Parties, along with each of their respective officers, directors, partners, members, shareholders, agents, employees, successors, and assigns (collectively, the “*Vivint Solar Indemnitees*”), from and against all Actions brought against and Losses incurred by any Vivint Solar Indemnitee arising out of or relating to this Agreement or any Purchase Order to the extent such Actions and Losses are caused by or are the result of any third party claim resulting from or arising out of: (a) any breach of this Agreement by Vivint or its successors and assigns (collectively, the “*Vivint-Related Persons*”); (b) the negligence or willful misconduct of the Vivint-Related Persons; (c) injury to person or property resulting from any product liability claims or other claims relating to the Products, including, without limitation, Vivint’s labeling on the Products or Vivint’s failure to withdraw or recall Products in a timely fashion; and (d) infringement by the Monitoring and Communications Equipment, Products, Hosted Software or the Product Development Activities of the Intellectual Property Rights of any third party under the Laws of the United States of America or any state or territory thereof (but not, for avoidance of doubt, the Laws of any foreign country), except to the extent that a claim is based on or arises out of (i) modifications to the Monitoring and Communications Equipment made in accordance with written directions or specifications provided by Vivint Solar or its Affiliates, (ii) the inclusion in the Products of Vivint Solar Background IP (other than New Vivint Solar Developments to the extent they are created by Vivint and assigned to Vivint Solar by Vivint pursuant to Section 18.2) if such infringement would not have occurred but for such inclusion or (iii) the use or integration of the Monitoring and Communications Equipment, Products or Hosted Software in combination with any third party Intellectual Property Rights or products or services by Vivint Solar, if such infringement would not have occurred but for such integration or combination. Without limiting the generality of the foregoing clause (d), Vivint shall, at Vivint’s option and Vivint’s sole cost and expense, either (x) procure for Vivint Solar, or reimburse Vivint Solar for procuring, the right to continue using any Monitoring and Communications Equipment, Products or Hosted Software found to infringe the Intellectual Property rights of a third party or (y) modify or replace the infringing Monitoring and Communications Equipment, Products or Hosted Software so that it becomes non-infringing, in either case in a manner and time period that does not unreasonably interfere with Vivint Solar’s activities or operations. If in connection with any such claim the continued use of any Monitoring and Communications Equipment or Product is forbidden by any court of competent jurisdiction, and neither of the foregoing remedies under clauses (x) or (y) are available, (A) Vivint will refund 100% of amounts paid by Vivint Solar and its Affiliates for Monitoring and Communications Equipment and Products purchased under this Agreement

which are then currently being held in inventory and will reimburse to Vivint Solar and its Affiliates the cost of return shipping and insurance for those Monitoring and Communications Equipment and Products, and (B) Vivint may terminate this Agreement.

11.2 **Vivint Solar's General Indemnity** . Vivint Solar shall defend, indemnify and hold harmless Vivint and its Affiliates, along with each of their respective officers, directors, partners, members, shareholders, agents, employees, successors, and assigns (collectively, the "**Vivint Indemnitees**"), from and against all Actions brought against and Losses incurred by any Vivint Indemnitee arising out of or relating to this Agreement or any Purchase Order to the extent such Actions and Losses are caused by or are the result of any third party claim resulting from or arising out of: (a) any breach of this Agreement by Vivint Solar or its successors and assigns (collectively, the "**Vivint Solar-Related Persons**"); (b) the negligence or willful misconduct of the Vivint Solar-Related Persons; and (c) infringement claims based on or arising out of (i) modifications to the Monitoring and Communications Equipment sold to Vivint Solar under this Agreement that are made in accordance with written directions or specifications provided by Vivint Solar or its Affiliates, or (ii) the inclusion in the Products sold to Vivint Solar under this Agreement of Vivint Solar Background IP or New Vivint Solar Developments (other than New Solar Vivint Developments to the extent they are created by Vivint and assigned to Vivint Solar by Vivint pursuant to Section 18.2) if such infringement would not have occurred but for such inclusion.

11.3 **Notice of Claim** . A Vivint Solar Indemnitee or Vivint Indemnitee (each, an "**Indemnified Party**") shall, promptly after the receipt of notice of the commencement of any legal action or of any claims against such Indemnified Party in respect of which indemnification may be sought pursuant to the provisions of this Article 11, notify Vivint or Vivint Solar, as the case may be (each, an "**Indemnifying Party**") in writing thereof, provided that the failure of an Indemnified Party promptly to provide any such notice shall only reduce the liability of the Indemnifying Party by the amount of any damages attributable to the failure of the Indemnified Party to give such notice in such manner. In case any such claim or legal action shall be made or brought against an Indemnified Party and such Indemnified Party shall notify the Indemnifying Party thereof, the Indemnifying Party may, or if so requested by the Indemnified Party shall, assume the defense thereof and after notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense thereof with legal counsel reasonably satisfactory to the Indemnified Party, the Indemnifying Party will not be liable to the Indemnified Party under this Article 11 for any legal fees and expenses subsequently incurred by such Indemnified Party in connection with the defense thereof. If the Indemnifying Party does not assume the defense of any such claim or legal action, then the Indemnifying Party shall remain liable to such Indemnified Party for any legal fees and expenses incurred by such Indemnified Party in connection with the defense thereof. No Indemnified Party shall settle any indemnified claim over which the Indemnifying Party has not been afforded the opportunity to assume the defense. The Indemnifying Party shall control the settlement of all claims over which it has assumed the defense; *provided*, that the Indemnifying Party shall not conclude any settlement which requires any action or forbearance from action by an Indemnified Party, or any payment by an Indemnified Party, without the prior approval of the Indemnified Party. The Indemnified Party shall provide reasonable assistance to the Indemnifying Party as reasonably requested by the Indemnifying Party, at the Indemnifying Party's sole cost and expense, in connection with such legal action or claim. For claims over which the Indemnifying Party has assumed the defense, the Indemnified Party shall have the right to participate in and be represented by counsel of its own choice and at its own expense.

11.4 **Insurance** . Vivint shall maintain in effect insurance in accordance with the provisions of Exhibit H promptly following acceptance of the initial Purchase Order and continuing throughout the remainder of the Term. Vivint shall comply with the terms of any policy required to be maintained by Vivint in connection with this Agreement. Vivint shall provide to Vivint Solar an insurance certificate meeting the requirements of Exhibit H by the earlier of (i) ten (10) days after the Effective Date and (ii) within five (5) days of the date of the first Purchase Order delivered by Vivint Solar hereunder.

## ARTICLE 12 COMPLIANCE WITH LAWS

12.1 **Vivint Generally** . Vivint shall at all times comply, and shall ensure that the Products, when delivered, comply, with all Laws and Standards and Codes applicable to the design, manufacture and intended use of the Products, the delivery of the Products, and the performance by Vivint of its other obligations under this Agreement. Vivint will provide all information under its control that is necessary or useful for Vivint Solar to obtain any export or import licenses required for Vivint Solar to ship or receive Products, including, but not limited to, certificates of origin, manufacturer's affidavits, Buy America qualification, and U.S. Federal Communications Commission's identifier, if applicable, within twenty (20) Business Days of Vivint Solar's request.

12.2 **Vivint Solar Generally** . Vivint Solar shall at all times comply with all Laws and Standards and Codes applicable to the installation and operation of the Products and the performance by Vivint Solar of its other obligations under this Agreement.

**ARTICLE 13**  
**DEFAULT, TERMINATION AND SUSPENSION**

13.1 **Events of Default** . The following conditions, events and occurrences shall each be an “*Event of Default*” for all purposes hereunder:

13.1.1 a Party fails to make payment of any amount payable to the other Party when due under this Agreement or any Purchase Order (other than amounts disputed in good faith or for which Vivint Solar has the right to offset), which failure continues for ten (10) Business Days after receipt of written notice of such non-payment from the non-defaulting Party;

13.1.2 a Party fails to cure a material breach or default in the performance of its obligations under this Agreement or any Purchase Order not otherwise specifically addressed in this Section 13.1 or elsewhere in this Agreement within thirty (30) days after receipt of written notice of such material breach or default from the non-defaulting Party; *provided* , that if such breach or default cannot be remedied with reasonable diligence within such thirty (30) day period, so long as the defaulting Party timely commences curing such material breach or default and proceeds with reasonable diligence thereafter to prosecute such cure, then the period for such cure shall be extended for a reasonable period of time up to ninety (90) days;

13.1.3 a Party files a petition in bankruptcy, files a petition seeking reorganization, arrangement, composition or similar relief, or makes a general assignment for the benefit of creditors, or if any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against a Party and not stayed, enjoined or discharged within ninety (90) days;

13.1.4 if any representation or warranty made by a Party in this Agreement was materially false or misleading when made, and such Party fails to remedy such materially false or misleading representation or warranty within thirty (30) days after receipt of written notice of the particulars of such materially false or misleading representation or warranty from the other Party;

13.1.5 a Party’s breach of or default of the confidentiality provisions of the Master Framework Agreement; or

13.1.6 a Party’s assignment of this Agreement other than in compliance with the requirements of Section 19.3 (no cure period).

13.2 **Remedies for Event of Default** .

13.2.1 Upon the occurrence of an Event of Default, the non-defaulting Party may (a) terminate this Agreement, or, at its election, one or more Purchase Orders, (b) seek specific performance of the defaulting Party’s obligations hereunder, or (c) seek any other legal or equitable remedy available to such non-defaulting Party under applicable Laws and this Agreement.

13.2.2 Any termination for an Event of Default shall be without prejudice to any other right or remedy the non-defaulting Party may have under this Agreement or at Law or in equity, and no such remedy shall be exclusive of any other remedy except as otherwise expressly set forth herein.

13.3 **Termination for Force Majeure** . If a Force Majeure Event affects the performance of the claiming Party for ninety (90) consecutive days, the non-claiming Party may terminate this Agreement or an affected Purchase Order upon thirty (30) days prior written notice to such Party.

**ARTICLE 14**  
**LIMITATIONS AND EXCLUSIONS ON LIABILITY**

14.1 **Limitation on Consequential Damages** . SUBJECT TO SECTION 14.3 , IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE WITH RESPECT TO THE PRODUCTS, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, ANTICIPATED OR LOST PROFITS, LOSS OF TIME, OR OTHER SIMILAR LOSSES OF ANY KIND INCURRED BY THE OTHER PARTY IN CONNECTION WITH SUCH PARTY’S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT.

14.2 **Limitation on Aggregate Liability** . SUBJECT TO SECTION 14.3 , EACH PARTY’S ENTIRE AND AGGREGATE LIABILITY FOR ALL CLAIMS MADE BY ONE PARTY AGAINST THE OTHER PARTY ARISING FROM THIS

AGREEMENT SHALL NOT EXCEED THE GREATER OF TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00) OR THE CONTRACT AMOUNT AS OF THE DATE LIABILITY IS DETERMINED.

14.3 **Exclusions from Limitations** . NOTHING IN THIS ARTICLE 14 SHALL BE DEEMED OR CONSTRUED TO (a) LIMIT RECOVERY OF AMOUNTS OWED TO A THIRD PARTY THAT MAY BE RECOVERABLE FROM THE OTHER PARTY PURSUANT TO ANY INDEMNITY UNDER ARTICLE 11, (b) LIMIT LIABILITY ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD, OR ILLEGAL OR UNLAWFUL ACTS, (c) APPLY TO ANY INSURED CLAIM TO THE EXTENT SUCH CLAIM IS COVERED BY INSURANCE PROCEEDS ACTUALLY RECEIVED FROM INSURANCE REQUIRED TO BE MAINTAINED UNDER THIS AGREEMENT, OR (d) LIMIT VIVINT'S WARRANTY OBLIGATIONS SET FORTH IN Article 9 AND EXHIBIT G. THE LIMITS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL NOT BE REDUCED BY THE AMOUNT OF INSURANCE PROCEEDS AVAILABLE TO VIVINT OR VIVINT SOLAR.

14.4 **No Limitation on Remedies** . Except where this Agreement states that the applicable remedy set forth herein is the sole or exclusive remedy (or words of similar import) for such event, the rights and remedies of the Parties with respect to this Agreement in relation to such event are in addition to, and shall not be read or deemed a limitation on, those rights and remedies that may be available to a Party at law or in equity.

14.5 **Supremacy** . The provisions of this Article 14 shall prevail over any conflicting or inconsistent provisions contained elsewhere in this Agreement or in any Purchase Order, except to the extent that such conflicting or inconsistent provisions elsewhere in this Agreement (but not in a Purchase Order) further restrict or reduce one Party's liability to the other.

## ARTICLE 15 REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party, as of the Effective Date and as of each date that Vivint accepts a Purchase Order in accordance with Section 3.1.3, as follows:

15.1 **Organization**. In the case of Vivint Solar, it is a limited liability company duly organized, validly existing, and in good standing under the Laws of the state of Delaware, and in the case of Vivint, it is a corporation duly organized, validly existing and in good standing under the Laws of the State of Utah.

15.2 **Authority**. It has full corporate power and authority to enter into this Agreement, to carry out its obligations under the this Agreement and each Purchase Order, and to consummate the transactions contemplated by this Agreement and each Purchase Order. The execution and delivery by it of this Agreement, the performance by it of its obligations under this Agreement and any Purchase Order and the consummation by it of the transactions contemplated herein have been duly authorized by all requisite corporate action on the part of it. This Agreement has been duly executed and delivered by it, and (assuming due authorization, execution, and delivery by the other Party) the Agreement (and, upon acceptance, each Purchase Order) constitutes a legal, valid, and binding obligation of it enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

15.3 **Permits**. No Permit is required on the part of it in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which it anticipates will be timely obtained in the ordinary course of performance of this Agreement and before being required by applicable Law.

15.4 **No Conflicts; Consents**. The execution, delivery and performance by it of this Agreement and the consummation of the transactions contemplated by this Agreement and each Purchase Order do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of its Organizational Documents; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to it; or (c) require the consent, notice or other action by any Person under any Contract to which it is a Party, except as expressly set forth in this Agreement. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to it in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

15.5 **Legal Proceedings.** There are no Actions pending or, to its knowledge, threatened against or by it or any of its Affiliates that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement. To its knowledge, no event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

## **ARTICLE 16 DISPUTE RESOLUTION**

16.1 **Dispute Resolution, Consent to Jurisdiction and Equitable Remedies.** If a dispute arises between Vivint and Vivint Solar in any way arising out of or relating to this Agreement, the provisions of the Master Framework Agreement pertaining to dispute resolution (including, without limitation, attorney's fees and specific performance as a remedy), which are hereby incorporated by reference, shall govern in all respects; *provided, however*, if any dispute arises between the Parties under this Agreement, prior to commencing litigation pursuant to the Master Framework Agreement, the Parties (through senior executives with authority to resolve the dispute) will first attempt to resolve the dispute in good faith for a period of no less than thirty (30) days from the date that any notice of such dispute issued by one Party is received by the other Party.

16.2 **Continued Performance During Dispute Resolution.** While any dispute is ongoing, each Party shall continue performing its obligations under this Agreement that are not the subject of the dispute.

## **ARTICLE 17 FORCE MAJEURE**

17.1 **Force Majeure Events.** Performance under this Agreement shall be excused due to, and a Party shall not be liable for or deemed in breach of this Agreement because of, any failure or delay in carrying out or observing its obligations under this Agreement, to the extent that such performance is rendered impossible or delayed by fire, flood, act of God or the public enemy, act of a Governmental Authority (other than in respect of the failure of a Party to comply with applicable Law), national or regional labor difficulties, riot, perils of the sea, or any other extraordinary event where the failure to perform or the delay is beyond the reasonable control of, and could not have been reasonably foreseen by, the nonperforming Party; *provided* that such event is not caused by or attributable to the negligence or fault of, or breach of its obligations hereunder by, such Party, and could not have been avoided by prudent commercial practices (any such event, a "**Force Majeure Event**"). Force Majeure Events shall not include: (a) mechanical or equipment failures (except to the extent any such failure is itself caused by a Force Majeure Event expressly listed above); (b) delays in customs clearance (except to the extent any such delay is itself caused by a Force Majeure Event expressly listed above); (c) any delays or other problems associated with the issuance, suspension, renewal, administration or withdrawal of, or any other problem directly or indirectly relating to, any Governmental Orders or Permits or the applications therefor where such delays or problems are within the affected Party's reasonable control; (d) labor strikes or other labor difficulties that are not of a general and widespread nature or are specific to the affected Party's personnel or facilities; (e) any weather condition unless of a catastrophic nature or listed above; (f) lack of financial resources, cost increases in commodities or labor, or other economic conditions; and (g) failure of raw or finished material supply, unless such failure was itself the result of a Force Majeure Event expressly listed above.

17.2 **Notice of Force Majeure Events.** The claiming Party shall promptly give the other Party a written notice describing the particulars of the Force Majeure Event of the occurrence of any such Force Majeure Event, including an estimate of the expected duration and the probable impact of the Force Majeure Event on the performance of such Party's obligations hereunder. The Party claiming the Force Majeure Event shall have a continuing obligation to deliver to the other Party regular updated reports supporting its claim until such time as the Force Majeure Event is no longer in effect.

17.3 **Mitigation.** The impact of the Force Majeure Event on a Party's performance shall be of no greater scope and no longer duration than is reasonably required by such event. The Party claiming a Force Majeure Event shall have a duty to mitigate the cause and effect, including duration, costs and Delivery Schedule impacts, in each case arising from such Force Majeure Event, and to resume performance of its affected obligations under this Agreement and the affected Purchase Orders promptly after being able to do so.

**ARTICLE 18**  
**INTELLECTUAL PROPERTY MATTERS**

18.1 **Vivint Ownership.** All of: (a) the Monitoring and Communications Equipment and the Vivint Software Platform, and all Intellectual Property Rights in the foregoing; and (b) all other Intellectual Property Rights owned or controlled by Vivint as of the Effective Date or developed or acquired by Vivint or its Subsidiaries after the Effective Date outside of the Product Development Activities performed under this Agreement ((a) and (b) collectively, “ *Vivint Background IP* ”) will be owned exclusively by Vivint. All improvements or modifications of the Vivint Background IP made in connection with the performance of this Agreement (“ *New Vivint Developments* ”) will be owned exclusively by Vivint, and Vivint Solar hereby assigns to Vivint any right, title, or interest it has or may acquire in the New Vivint Developments, including Intellectual Property Rights, subject to the license granted by Vivint in Section 18.3.

18.2 **Vivint Solar Ownership.** All of the Vivint Solar Materials and all other Intellectual Property Rights owned or controlled by Vivint Solar as of the Effective Date or developed or acquired by Vivint Solar or its Subsidiaries after the Effective Date outside of the Product Development Activities performed under this Agreement (“ *Vivint Solar Background IP* ”) will be owned exclusively by Vivint Solar. All improvements or modifications of the Vivint Solar Background IP made in connection with the performance of this Agreement (“ *New Vivint Solar Developments* ”), will be owned exclusively by Vivint Solar, and Vivint hereby assigns to Vivint Solar any right, title, or interest it has or may acquire in the New Vivint Solar Developments, including Intellectual Property Rights.

18.3 **Licenses; Other Developments.** Subject to the terms and conditions of this Agreement, Vivint hereby grants to Vivint Solar and its permitted successors and assigns a limited, irrevocable, non-exclusive, non-sublicensable, non-assignable and non-transferable (except as permitted under Section 19.3), fully paid-up, royalty-free, worldwide right and license, under Vivint Background IP and the New Vivint Developments, in each case solely to distribute, purchase, install, use, have used, operate, maintain, repair, or offer for sale and sell, in each such case, the Monitoring and Communications Equipment and Products sold to Vivint Solar during the Term of this Agreement in accordance with the terms of this Agreement. Except for New Vivint Developments and New Vivint Solar Developments, any work of authorship, designs, invention, improvement, technology, development, discovery, or trade secret that is conceived, made, or discovered by either Party, solely or in collaboration with others, in the performance of this Agreement, ownership will follow inventorship or authorship in accordance with applicable law.

18.4 **Production and Customer Data.**

18.4.1 **Ownership.** Subject to Article 8, Vivint Solar shall retain exclusive ownership of all information, data, and documents relating to the Projects in which any of the Products are installed, including, without limitation, all production data, customer data, and any other data collected, generated, or derived by or from the Products or the Vivint Software Platform pursuant to Section 10.1, and that may be stored or accessible by any Products with respect to the Systems owned or operated by Vivint Solar or any Financing Party of Vivint Solar (“ *Data* ”). All such Data shall be deemed the Confidential Information of Vivint Solar and, except as expressly set forth in this Section 18.4, shall be used by Vivint solely in its performance of its obligations under this Agreement and shall not be disclosed by Vivint to any Person without Vivint Solar’s prior written consent. Vivint Solar may transfer ownership of Data with respect to particular Projects to a Financing Party providing tax equity financing for such Project pursuant to Article 8.

18.4.2 **Use of Data by Vivint.** During the period when Vivint is hosting and operating the Vivint Software Platform Services pursuant to Section 10.1, and subject to the terms and conditions of this Agreement, Vivint may access and use Data consisting of customer Data generated by Vivint in its performance of the Vivint Software Platform Services, which customer Data is anonymous with respect to the customer’s personal identifying information or any other sensitive information, and which is aggregated with other customers’ Data, solely for Vivint’s internal purposes, including Vivint’s ongoing analysis, research, and development; *provided, however*, except as permitted under Section 18.4.3, Vivint shall have no right disclose any such Data to any third party, other than to the extent necessary for its performance of the Services if ownership of such Data has been transferred to a Financing Party pursuant to Article 8 unless such Financing Party consents to Vivint’s disclosure of such Data in writing, in which case the limitations set forth in Section 18.4.3 and any other limitations set forth in such written consent shall apply to Vivint’s disclosure of such Data.

18.4.3 **Limitations on Vivint’s Disclosure of Data.** Vivint may, without the prior written consent of Vivint Solar, disclose the Data described in Section 18.4.2 to Persons other than Vivint Solar so long as that Data (a) is anonymous with respect to the customer’s personal identifying information, Vivint Solar’s identity as System owner, or any other sensitive information, and (b) is aggregated with other customer Data; *provided, however*, prior to the first disclosure of such customer Data to a Person other than

Vivint Solar (or any disclosure where the methodologies of Vivint in characterizing or presenting the customer Data are materially different than previously-used methodologies or presentations), Vivint shall afford Vivint Solar a reasonable opportunity to evaluate the disclosure and concur that such disclosure conforms to the requirements of this Section 18.4.

## ARTICLE 19 MISCELLANEOUS

19.1 **Inspection of Vivint's Records.** During the Term, Vivint shall keep and maintain current and accurate books, records, accounts, correspondence, and any other supporting evidence related to its performance under this Agreement and all Purchase Orders as are necessary to verify Vivint's compliance with its obligations under this Agreement, including, without limitation, Vivint's compliance with Section 4.1.2. During the Term, and for a period of three (3) years after the end of the Term, the foregoing documentation shall be open to inspection and reproduction by Vivint Solar and representatives and accountants retained by Vivint Solar to the extent necessary to (i) adequately permit evaluation and verification of Invoices, and (ii) determine Vivint's compliance with the terms of this Agreement and Purchase Orders. Any such inspection shall be performed on Business Days and during normal business hours upon reasonable prior notice to Vivint no more frequently than once per calendar quarter.

19.2 **Governing Law.** The interpretation and enforceability of this Agreement and the rights and liabilities of the Parties under this Agreement will be governed by the laws of the State of Utah without giving effect to any principles of conflict of laws.

19.3 **Assignment; Change of Control.** Except as provided in this Section 19.3, this Agreement may not be assigned or otherwise transferred, nor may any right or obligation hereunder be assigned or transferred, by either Party without the consent of the other Party, which may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may, without the other Party's consent, assign this Agreement and its rights and obligations hereunder in whole or in part to (i) an Affiliate or (ii) in connection with a Change of Control; *provided, however*, that Vivint Solar must notify Vivint at least twenty (20) days before completion of any such Change of Control, and Vivint shall have the right (in its discretion), at any time after receipt of such notice, if Vivint Solar undergoes a Change of Control to the benefit of a Person and Vivint reasonably determines that the acquiring party is a competitor or an Affiliate of a competitor of Vivint, to elect any one or more of the following options: (i) require Vivint Solar, including its acquiring party, to adopt reasonable procedures to be agreed upon in writing with Vivint to prevent the disclosure of all Confidential Information of Vivint and its Affiliates; or (ii) to terminate this Agreement in its entirety, provided that Vivint shall give sixty (60) days prior written notice before terminating any non-information technology Services, and one hundred twenty (120) days prior written notice before terminating any information technology Services. Any permitted assignee shall assume all obligations of its assignor under this Agreement. This Agreement is binding upon the permitted successors and assigns of the Parties. Any attempted assignment not in accordance with this Section 19.3 shall be void.

19.4 **Financing Assistance.** Vivint shall use commercially reasonable efforts to cooperate, at the sole cost and expense of Vivint Solar, with all reasonable requests of Vivint Solar in connection with any financing transaction undertaken by Vivint Solar, including, without limitation, by (a) executing any stoppels, amendments and modifications hereto reasonably requested by the Financing Parties and which are customary for such transactions and do not adversely affect Vivint, (b) promptly furnishing all non-privileged and non-confidential documents as may be reasonably requested by the Financing Parties, and (c) promptly executing consents and other related documents, in a form reasonably requested by such Financing Party(ies) and containing provisions customary to such financing transactions to the extent they do not adversely affect Vivint.

19.5 **Representatives.** Each Party shall nominate a Representative or Representatives to oversee and coordinate the performance of its obligations under this Agreement and each Purchase Order delivered under this Agreement and to act as its liaison with the other Party's Representative for the duration of this Agreement. The contact information for each Party's Representative as of the Effective Date is set forth in Exhibit D, and each Party may change its Representative or its information in Exhibit D upon ten (10) days prior written notice to the other Party. Notwithstanding any other provision of this Agreement, each Party acknowledges that (a) no action by such Party's Representative can waive, alter or modify any right of such Party or obligation of the other Party hereunder, and (b) such Party's Representative is not authorized to execute any certificate hereunder, and that such certificate will be executed by a duly authorized officer or other designated employee of such Party.

19.6 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, that provision will be enforced to the fullest extent permitted by applicable Law and the remainder of this Agreement will remain in full force and effect. If the time period or scope of any provision is declared by a court of competent

jurisdiction to exceed the maximum time period or scope that that court deems enforceable, then that court is hereby authorized and instructed to reduce the time period or scope to the maximum time period or scope permitted by Law. If the geographic region or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum geographic region or scope that that court deems enforceable, then that court will reduce the geographic region or scope to the maximum time period or scope permitted by Law.

19.7 **Amendments.** This Agreement may only be amended or modified by an instrument in writing signed by each Party.

19.8 **Non-Waiver.** Any failure of any Party to enforce any of the provisions of this Agreement or any Purchase Order or any decision or failure to require compliance with any of its terms at any time during the Term shall in no way affect the validity of this Agreement or a Purchase Order and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any such waiver of any of the provisions of this Agreement or any Purchase Order shall be in writing and executed by the party to whom performance or other compliance with the terms hereof is owed.

19.9 **Independent Contractor.** Vivint is an independent contractor, and all persons employed by Vivint in connection herewith shall be employees of Vivint and not employees of Vivint Solar or any of Vivint Solar's Affiliates in any respect. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Vivint and Vivint Solar.

19.10 **Counterparts and Execution.** This Agreement and any document related to this Agreement may be executed by the Parties on any number of separate counterparts, by facsimile or email, and all of those counterparts taken together will be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or portable document format (".pdf") signature page will constitute an original for the purposes of this Section 19.10.

19.11 **Notices.** All notices, requests, demands, and other communications required or permitted to be given under this Agreement by either Party must be in writing delivered to the applicable Party at the applicable address set forth in Exhibit D or to such other address as any Party may designate by written notice to the other Party. Each notice, request, demand, or other communication will be deemed given and effective, as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by first-class U.S. Mail, postage prepaid, upon the earlier to occur of receipt or three (3) days after deposit in the U.S. Mail; (iii) if sent by a recognized prepaid overnight courier service, one day after the date it is given to such service; (iv) if sent by facsimile, upon receipt of confirmation of successful transmission by the facsimile machine; and (v) if sent by email, upon acknowledgement of receipt by the recipient.

19.12 **Further Assurances.** Each Party will promptly execute, or cause its subsidiaries to promptly execute, such other documents and instruments, and provide such other assurances, as reasonably necessary to carry out the purpose and intent of this Agreement. Each Party shall, and shall cause its subsidiaries to, take, do and perform such additional acts as may be reasonably necessary or appropriate to effectuate the terms and conditions of this Agreement and to carry out and perform all of its obligations herein.

19.13 **No Recourse.** The obligations of Vivint and Vivint Solar under this Agreement shall be without recourse to any of the officers, board members, directors, shareholders, members, employees, agents, partners or Affiliates of either of them.

19.14 **Survival.** The provisions of Article 4, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 14, Article 16, Article 18, Article 19, and of Sections 1.1, 3.3, 5.3, 5.4 and 5.5 of this Agreement shall survive the expiration or other termination of this Agreement.

19.15 **Third Parties.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement shall be construed to create any duty to, standard of care with respect to, or any liability to any Person who is not a party to this Agreement.

19.16 **Rules of Interpretation.** In this Agreement: (a) the terms "herein," "herewith" and "hereof" are references to this Agreement, taken as a whole; (b) the term "includes" or "including" shall mean "including, without limitation"; (c) references to a "Section," "subsection," "clause," "Article" or "Exhibit" shall mean a Section, subsection, clause, Article or Exhibit of this Agreement, as the case may be, unless in any such case the context requires otherwise; (d) all references to a given agreement, instrument or other document, or to any Law, Standard or Code, shall be a reference to such agreement, instrument or other document, or to such Law, Standard or Code, as modified, amended, supplemented and/or restated from time to time; and (e) reference to a

Person or Party includes its successors and permitted assigns; the singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa.

19.17 **Entire Agreement.** Vivint and Vivint Solar agree that this Agreement (including all Schedules and Exhibits attached hereto), the Master Framework Agreement, and all Purchase Orders entered into by the Parties pursuant to this Agreement, constitute the complete and entire agreement between the Parties and supersedes all prior oral and written understandings and all contemporaneous oral negotiations, commitments and understandings between the Parties relating to the subject matter hereof. The Parties agree that no trade usage, prior course of dealing or course of performance under this Agreement shall be a part of this Agreement or shall be used in the interpretation or construction of this Agreement or any Purchase Order.

19.18 **Master Framework Agreement.** Section 4 (Confidentiality) of the Master Framework Agreement is hereby incorporated in this Agreement by reference.

[ Signatures appear on next page ]

IN WITNESS WHEREOF, the Parties have executed this Product Development and Supply Agreement as of the date first written above.

**VIVINT SOLAR:**

VIVINT SOLAR DEVELOPER, LLC,  
a Delaware limited liability company

By: /s/ Greg Butterfield  
Name: Greg Butterfield  
Title: Chief Executive Officer

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

PRODUCT DEVELOPMENT AND SUPPLY AGREEMENT  
*Vivint Solar, Inc. and Vivint, Inc.*

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## SCHEDULE 1

### Definitions and Rules of Interpretation

#### 1. Definitions

“**2GIG**” means 2GIG Technologies, Inc., a Delaware corporation and subsidiary of Linear, LLC.

“**Action**” means any claim, action, cause of action, demand, lawsuit, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, by or before any Governmental Authority, or any other arbitration, mediation or similar proceeding.

“**Affiliate**” of a Party means any Person (excluding the other Party to this Agreement) that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, that Party. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Agreement**” means this Agreement as defined in the preamble, including this Schedule 1, and Exhibits A, A-1, B, C, D, E, F, G, and H, as amended in accordance with this Agreement from time to time.

“**Basic Services**” means (a) hosting and operating the Vivint cloud services (“**Hosted Software**”) for all monitored Projects in accordance with service levels to be determined by mutual agreement of the Parties when the Hosted Software becomes active (at which time, such service level agreement will be attached to this Agreement as Exhibit F), (b) providing access to the Hosted Software to end users via a web-based online interface and to Vivint Solar via Vivint’s application programming interface, (c) providing GSM cellular radio communications and data services as part of the Vivint cloud services, (d) providing any necessary licenses to third party Intellectual Property Rights to enable Vivint Solar and its customers to use the Hosted Software and related Vivint cloud services, and (e) customer support for the Products and other Basic Services providing in clauses (a) through (d) above, including telephone and electronic mail support, during Vivint’s customary business hours with response times equivalent to those response times provided to Vivint technicians.

“**Business Day**” or “**Business Days**” means any day other than a Saturday, Sunday or other day on which banks are authorized to be closed in Provo, Utah.

“**Carrier**” means a carrier selected by Vivint when arranging transportation of Products from the Delivery Point to the Destination Point.

“**Change of Control**” means with respect to a Person: (i) the sale of all or substantially all of such Person’s assets or business; (ii) a merger, reorganization or consolidation involving such Person in which the voting securities of such Person outstanding immediately prior thereto cease to represent at least fifty percent (50%) of the combined voting power of the surviving entity immediately after such merger, reorganization or consolidation; or (iii) a person or entity, or group of persons or entities, acting in concert acquire more than fifty percent (50%) of the voting equity securities or management control of such Person (other than in connection with an arrangement principally for bona fide equity financing purposes of such Person in which the Person is the surviving corporation).

“**Confidential Information**” has the meaning set forth in the Master Framework Agreement.

“**Contract**” means contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments, and legally binding arrangements, whether written or oral.

“**Contract Amount**” means the total aggregate amount paid and payable by Vivint Solar under all accepted Purchase Orders as of any given time during the Term.

“**Data**” has the meaning set forth in Section 18.4.1.

“**Defective Product**” has the meaning set forth in the Product Warranty.

“ **Delivery Date** ” means the date that a Product arrives at the Destination Point.

“ **Delivery Point** ” has the meaning set forth in Section 5.1.1 .

“ **Delivery Schedule** ” means the written schedule, submitted as part of and with each Purchase Order, detailing: (a) the Scheduled Ship Date(s), which in all events shall accommodate the Required Lead Time except as set forth in Section 3.1.4 ; (b) the Product names/models and quantities thereof to be delivered on the specific Scheduled Ship Date(s); and (c) the Destination Point for each Product to be delivered.

“ **Destination Point** ” means the location at Vivint Solar’s facility (or Vivint Solar’s contracted storage facility) to which the Carrier is to deliver Products ordered under a Purchase Order, as designated in the Delivery Schedule relating to such Purchase Order.

“ **Development Project Leader** ” has the meaning set forth in Section 2.2 .

“ **Effective Date** ” has the meaning set forth in the preamble to this Agreement.

“ **Encumbrance** ” means any charge, claim, equitable interest, mortgage, lien, option (including any right to acquire, right of pre-emption or conversion), pledge, hypothecation, security interest, title retention, easement, encroachment, right of first refusal or negotiation, adverse claim or restriction of any kind, including any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership, or any agreement to create any of the foregoing.

“ **Enphase** ” means Enphase Energy, Inc., a Delaware corporation.

“ **Envoy** ” means Enphase’s proprietary power line communications hardware device connecting each photovoltaic module and microinverter in a solar photovoltaic system and providing a network communications gateway for Enlighten (Enphase’s proprietary software platform with web-based tools and interfaces enabling remote monitoring of solar photovoltaic systems, individual solar modules within such systems, and their performance) to access performance data relating to such solar photovoltaic system, the model number of which is ENV-120-01 VM.

“ **Event of Default** ” has the meaning set forth in Section 13.1 .

“ **Financing Parties** ” means (a) any and all existing or potential lenders providing or considering providing senior or subordinated construction, interim or long-term debt or other financing or refinancing to Vivint Solar or its Affiliates, (b) any and all existing or potential equity investors in Vivint Solar or its Affiliates providing tax equity investment or leveraged lease-financing or refinancing (or any other equity investor that makes a capital contribution to Vivint Solar or its Affiliates in cash or in kind) or (c) any Person providing or seeking to provide credit support to Vivint Solar or its Affiliates, in each case in connection with one or more Projects and, in each case, any trustee or agent acting on behalf of Vivint Solar or its Affiliates.

“ **Force Majeure Event** ” has the meaning set forth in Section 17.1 .

“ **Fully Loaded Costs** ” means (a) all documented, direct out of pocket costs and expenses that Vivint reasonably expects to incur under contracts with any Person existing within thirty (30) days of each Initial Purchase Order Anniversary (or that are certain to exist as of the Initial Purchase Order Anniversary) to procure a Product meeting the requirements of the Agreement for delivery to Vivint Solar as of the applicable Initial Purchase Order Anniversary, including (i) costs of cellular service allocable to such Product, (ii) any licensing fees allocable to such Product, (iii) hardware costs of such Product paid to 2GIG or another manufacturer of such Product, and (iv) any software costs allocable to such Product; plus (b) the net present value of the costs and expenses that Vivint reasonably estimates it will incur to perform the Services for the Services Period as allocable to a Product. “Fully Loaded Costs” shall not include (and the following shall not be chargeable to Vivint Solar in the Unit Price of Products) any of Vivint’s internal costs and expenses associated with performance of this Agreement and that may otherwise be customarily recouped through the price of goods sold, including, without limitation: (i) hourly rates that Vivint would customarily charge to other Persons (including Affiliates) for an employee’s time and labor; and (ii) overhead costs, and all other direct and indirect costs (except for those payable under clauses (a) or (b) above), including, without limitation: (A) property taxes and payroll taxes and insurance; (B) worker’s compensation insurance required by applicable Law; (C) costs of maintaining insurance policies; (D) vacation and sick leave; (E) home and branch office rents; (F) light, heat, water, local telephone and other utilities for home and branch offices; (G) procurement or use of office furniture and equipment (e.g., computers, software, copy machines, and other equipment) for home and branch offices; (H) all accounting and

legal services; (I) salaries and wages of those that may be billed to a project but who are not performing work or services, including salaries and wages for executive officers, members of the board of directors, and costs of general management departments, including sales, public relations, human resources, guards, receptionists, mail room, and janitorial and maintenance employees; and (J) to the extent not covered in the foregoing, all employee benefit plans.

“ **Good Faith Efforts** ” has the meaning set forth in Section 3.2.

“ **Governmental Authority** ” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“ **Governmental Order** ” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“ **Indemnified Party** ” has the meaning set forth in Section 11.3.

“ **Indemnifying Party** ” has the meaning set forth in Section 11.3.

“ **Initial Purchase Order Anniversary** ” has the meaning set forth in Section 4.1.2.

“ **Initial Term** ” has the meaning set forth in Section 1.2.

“ **Intellectual Property Rights** ” means, with respect to any Person, all (a) patents, patent applications, patent disclosures, inventions and improvements (whether patentable or not), (b) copyrights and copyrightable works (including computer programs) and registrations and applications therefor, including any software, firmware, or source code, (c) trade secrets, know-how and other confidential information, (d) database rights, (e) have made drawings and (f) all other forms of intellectual property (other than trademarks), including waivable or assignable rights of publicity or moral rights, and any right to bring suit or collect damages for the infringement, misappropriation or violation of the foregoing, anywhere in the world, that are held by that Person.

“ **Invoice** ” has the meaning set forth in Section 4.3.

“ **Late Payment Rate** ” means a rate of interest equal to the lesser of one percent (1%) per month of the amount due or the maximum rate permitted by applicable Law.

“ **Laws** ” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority, including the rules and regulations of the U.S. Securities and Exchange Commission, having jurisdiction over the Products, the site at which Products are installed, and this Agreement and each other document, instrument and agreement delivered hereunder or in connection herewith, including those relating to health, safety or the environment.

“ **Losses** ” means any and all deficiencies, judgments, settlements, assessments, liabilities, losses, damages, interest, fines, penalties, costs, expenses (including legal, accounting and other costs and expenses of professionals) incurred in connection with investigating, defending, settling or otherwise satisfying any and all Actions, assessments, judgments or appeals, and in seeking indemnification therefor, and interest on any of the foregoing to the extent that interest is awarded thereon; *provided*, that, the term “Losses” shall not include any special or punitive damages, except to the extent any such special or punitive damages are awarded pursuant to a third-party claim.

“ **Manufacturing Facility** ” means the manufacturing facility or facilities at which Vivint or its contract manufacturer(s) will manufacture the hardware included in the Products.

“ **Marketing Services Agreement** ” means that certain Marketing and Customer Relations Agreement by and between the Parties dated as of the same date as the Effective Date.

“ **Master Framework Agreement** ” means that certain Master Framework Agreement of even date herewith by and between Vivint and Vivint Solar, Inc.

“**Monitoring and Communications Equipment**” has the meaning set forth in the Recitals.

“**New Vivint Solar Developments**” has the meaning set forth in Section 18.2.

“**Non-Competition and Exclusivity Agreement**” means the Non-Competition And Exclusivity Agreement entered into on the Effective Date by and between VIVINT SOLAR, INC. (f/k/a Vivint Solar Holdings, Inc.), and VIVINT, INC.

“**Notice of Acceptance**” has the meaning set forth in Section 2.1.

“**Organizational Document**” means a Party’s articles or certificate of incorporation and its by-laws, regulations or similar governing instruments required by the laws of its jurisdiction of formation or organization.

“**Party**” and “**Parties**” have the meanings set forth in the preamble to this Agreement.

“**Payment Date**” has the meaning set forth in Section 4.3.

“**Permit**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Person**” means an individual, corporation, Partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

“**PO Product Quantity**” has the meaning set forth in Section 3.1.3(b).

“**Product**” means the Monitoring and Communications Equipment, as further developed in accordance with this Agreement for use by Vivint Solar in Projects.

“**Product Development Activities**” means all activities undertaken by the Parties pursuant to Article 2 and as described further in Exhibit A, relating to development of the modified and improved Products.

“**Product Hardware Upgrade**” has the meaning set forth in Exhibit E.

“**Product Warranty**” means that certain Limited Product Warranty for the Products attached hereto as Exhibit G, as supplemented by the provisions of Article 9.

“**Product Warranty Period**” has the meaning set forth in Section 9.1.

“**Project**” has the meaning set forth in the recitals.

“**Prudent Industry Practices**” means the practices, methods, acts and equipment (including but not limited to the practices, methods, acts and equipment engaged in or approved by a significant portion of the consumer electronics industry operating in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable Law, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. For the avoidance of doubt, the term “Prudent Industry Practices” is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts.

“**Purchase Order**” means a purchase order for Products substantially in the form attached as Exhibit B.

“**Renewal Term**” has the meaning set forth in Section 1.2.

“**Representative(s)**” means the person or persons designated from time to time by each Party to act as their representative under Section 19.5 and, as of the Effective Date, are listed in Exhibit D.

“**Required Lead Time**” means at least one hundred five (105) days prior to the first anticipated Scheduled Ship Date of Products ordered under a Purchase Order.

“**Restricted Parties**” means, with respect to a Party, such Party and its controlled Affiliates whether in existence as of the Effective Date or thereafter incorporated or formed.

“**Scheduled Ship Date**” means the date on which Vivint shall cause delivery of Products ordered under a Purchase Order to the Delivery Point for tendering to the Carrier, as set forth in the applicable Delivery Schedule.

“**Services**” means all or any of the Basic Services or the Supplemental Services.

“**Services Period**” has the meaning set forth in [Section 10.1](#).

“**Services Warranty**” has the meaning set forth in [Section 10.2](#).

“**Services Warranty Period**” has the meaning set forth in [Section 10.2](#).

“**Shipment Protocol**” has the meaning set forth in [Section 5.1.5](#).

“**Sky Panel**” means Vivint’s proprietary touch screen hardware that monitors alarm systems and other attributes of Vivint’s Services, including a built-in Internet gateway with WIFI/Cellular capabilities and certain proprietary software, a further description of which and Specifications for which are set forth in [Exhibit A-1](#).

“**Specifications**” mean Vivint’s specifications for each Product as either attached to this Agreement in [Exhibit A-1](#) or as developed and agreed upon by the Parties in connection with the Product Development Activities or [Sections 6.2](#) or [6.3](#).

“**Standards and Codes**” means the following, as applicable to each Product: UL 1741; UL 60950-1; EN 60950-1; CSA22.2 No. 60950-1; IEC 60950-1; IEEE1547, FCC Part 15 Class B; ANSI C12.1, C12.10, C12.20, C37.90.1; and any other similar standards and codes compliance with which is either mandatory under applicable Law or standard for such type of equipment based on industry standards as such were in place at the time the Product was delivered to Vivint Solar at the Delivery Point.

“**Supplemental Services**” means the various services set forth and described on [Exhibit E](#).

“**System**” means a solar photovoltaic system installed as part of a Project.

“**Taxes**” means all federal, state, or local income, property, license, privilege, sales, use, VAT, excise, gross receipts, or other taxes, duties, tariffs, and levies now or hereafter applicable to, measured by, or imposed upon or with respect to the manufacturing, purchase, sale or use of the Products sold under Purchase Orders or any other transactions contemplated by this Agreement, and which are levied or assessed under any applicable Law by any Governmental Authority.

“**Term**” has the meaning set forth in [Section 1.2](#).

“**Unit Price**” has the meaning set forth in [Section 4.1.1](#).

“**Vivint**” means has the meaning set forth in the preamble to this Agreement.

“**Vivint Background IP**” has the meaning set forth in [Section 18.1](#).

“**Vivint Encumbrance**” has the meaning set forth in [Section 5.4](#).

“**Vivint Indemnities**” has the meaning set forth in [Section 11.2](#).

“**Vivint-Related Persons**” has the meaning set forth in [Section 11.1](#).

“**Vivint Services**” has the meaning set forth in the Recitals.

“**Vivint Software Platform**” means Vivint’s proprietary software platform with web-based tools and interfaces enabling remote monitoring of solar photovoltaic systems such as the Projects, individual solar modules composing such systems, and their performance, and which interfaces with the Products and integrates with a billing system.

“ **Vivint Software Platform Services** ” means the services described as such in Exhibit E.

“ **Vivint Technology** ” has the meaning set forth in Section 18.1.

“ **Vivint’s Documentation** ” means user documentation (including user documentation with respect to the Vivint Software Platform Services) furnished to Vivint Solar by Vivint for distribution along with the Products.

“ **Vivint’s Facility** ” means Vivint’s warehouse located at 500 South 500 West, Lindon, Utah 84042, or any other facility subsequently designated by Vivint.

“ **Vivint Solar** ” has the meaning set forth in the preamble to this Agreement.

“ **Vivint Solar Background IP** ” has the meaning set forth in Section 18.2.

“ **Vivint Solar Business** ” means the business of selling power, electricity, energy or storage solutions to any consumer, business, or any other Person.

“ **Vivint Solar Indemnities** ” has the meaning set forth in Section 11.1.

“ **Vivint Solar Materials** ” has the meaning set forth in Section 2.3.

“ **Vivint Solar-Related Persons** ” has the meaning set forth in Section 11.2.

“ **Warranties** ” means, as applicable, the Product Warranty and the Services Warranty.

**EXHIBIT A**

**PRODUCT DEVELOPMENT ACTIVITIES**

**1. A PPOINTMENT OF D EVELOPMENT P ROJECT L EADERS**

**Vivint's Development Project Leader:**

Todd Thompson  
4931 North 300 West  
Provo, UT 84604  
Phone: 801.229.6065  
Email: tthompson@vivint.com

**Vivint Solar's Development Project Leader:**

Dwain Kinghorn  
4931 North 300 West  
Provo, UT 84604  
Phone: 801.229.6540  
Email: dwain.kinghorn@vivintsolar.com

**2. S COPE OF P RODUCT D EVELOPMENT A CTIVITIES**

Within sixty (60) days after the Effective Date, the Parties through their respective Development Project Leaders, shall collaborate in good faith to evaluate and assess various potential improvements for the Monitoring and Communications Equipment, including, but not limited to:

- (a) exchanging relevant information, including the current Specifications of the Monitoring and Communications Equipment and Vivint Solar Materials and identifying improvements to the Monitoring and Communications Equipment and related Specifications, and;
- (b) prioritizing work on such improvements based on the functional value of each improvement to the Parties or other criteria as the Development Project Leaders may determine from time to time;
- (c) developing a detailed scope of Product Development Activities relating to each improvement project and allocating responsibilities for each project;
- (d) determining appropriate schedules and milestones for the development and commercialization of each improvement or improvements; and
- (e) reducing the foregoing to a written plan for the conduct of such Product Development Activities.

The improvements to the Monitoring and Communications Equipment and Product Development Activities will generally be designed to result in Products that (i) are at least functionally equivalent to, and therefore may serve as substitutes for, certain products used by Vivint Solar as of the Effective Date to monitor, collect and communicate performance data from its Projects for billing and other purposes, including Enphase's Envoy, and (ii) have the capability to communicate and interface with Enphase, SolarEdge, PowerOne, Fronius and other top-tier inverter providers as Vivint Solar may reasonably designate.

**EXHIBIT A-1**

**PRODUCTS AND UNIT PRICE**

1. **Unit Price** : The Unit Price of equipment to be included in the Products is set forth below, subject to adjustment pursuant to Section 4.1.2 of the Agreement. The Parties will amend the following table as new Products become available pursuant to Sections 6.2 and 6.3 of the Agreement.

<b>ITEM NAME</b>	<b>PART NUMBER</b>	<b>DESCRIPTION ***</b>	<b>UNIT PRICE *</b>
Sky Panel (Next Gen Panel)	V-MP1-345	7 in., 24-bit color multi-touch touchscreen display (including on-screen video and mobile application) with capacity for multiple users, key fobs and Z-wave devices and microphone/speaker for live 2-way communication.	\$600

\* Unit Prices are based on Fully Loaded Cost and include all Warranties and Basic Services set forth in the Agreement. Inclusions and exclusions from the Unit Prices are set forth in Section 4.2 of the Agreement.

2. **Specifications** . Initial Specifications for Products to be appended upon completion of initial Product Development Activities as provided in Exhibit A . Thereafter, Specifications for new Products or modifications to Specifications for Products that exist during the Term shall be added or substituted pursuant to Sections 6.2 and 6.3 of the Agreement.

Exhibit A-1

PRODUCT DEVELOPMENT AND SUPPLY AGREEMENT  
*Vivint Solar, Inc. and Vivint, Inc.*

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**EXHIBIT B**

**FORM OF PURCHASE ORDER**



Purchase Order No. \_\_\_\_\_

Date \_\_\_\_\_

4931 North 300 West  
Provo UT 84604

Vendor:

Vivint, Inc.
[ _____ ]
[ _____ ]
Attn:

Vivint Solar:

VIVINT SOLAR DEVELOPER, LLC
4931 North 300 West
Provo, UT 84604
Attn:

Contract Number: \_\_\_\_\_

All invoices must reference our PO number in order to be paid.

Delivery Point		Payment Terms	Confirm With			Page
F.O.B. Seller's Facility (INCOTERMS 2010)		Net 30				1
L/N	Seller's Product Number	Description (Model Name)	U/M	Quantity	Unit Price	Ext. Price

**Delivery Schedule with Scheduled Ship Dates and Destination Points for Products ordered under this Purchase Order is attached to this Purchase Order.**

**Destination Points may be modified pursuant to the Product Development and Supply Agreement dated June \_\_\_\_\_, 2014.**

Product Subtotal	
Freight/Shipping Costs	At Vivint's cost as invoiced by Carriers
[Miscellaneous]	
[Tax (Estimated)]	
Total (excluding Shipping)	

\_\_\_\_\_  
Authorized Signature of Vivint Solar

**EXHIBIT C**

**BUFFER INVENTORY**

- (a) Following acceptance of the first Purchase Order, Vivint will use commercially reasonable efforts to maintain a manufacturing buffer inventory of finished goods equal to ten percent (10%) of the aggregate PO Product Quantities of Purchase Orders issued in the prior three (3) months. Vivint will initially establish the finished goods inventory (“**FGI**”) starting three (3) months after the calendar month in which the first Purchase Order is issued under the Agreement. Once established, Vivint will report the weekly status of the FGI to Vivint Solar.
- (b) The FGI is to be maintained exclusively for Vivint Solar and will not be used without prior written authorization from Vivint Solar.
- (c) The FGI is to be regularly replaced on a first-in, first-out basis.
- (d) The FGI is to be used to fulfill short-term upside orders from Vivint Solar or to meet rush requests of Vivint Solar pursuant to Section 3.1.4.
- (e) In the event the FGI is drawn down, Vivint will automatically replenish the FGI by building out the appropriate quantity of FGI within one hundred twenty (120) days.
- (f) Vivint will submit to Vivint Solar a monthly report of the exact FGI volume and work in progress (WIP) volume.
- (g) The buffer inventory quantities will be reviewed a minimum of one time per financial quarter.
- (h) Deliveries of finished Products will be made in accordance with Vivint Solar’s Purchase Orders.

Exhibit C

PRODUCT DEVELOPMENT AND SUPPLY AGREEMENT  
*Vivint Solar, Inc. and Vivint, Inc.*

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EXHIBIT D

NOTICES; REPRESENTATIVES

**I. Parties' official contacts for all Notices :**

**Vivint Solar Developer, LLC**

For Purchase Orders:

Brian Hollingsworth  
Director of Supply Chain  
4931 North 300 West  
Provo, UT 84604  
[Brian.hollingsworth@vivintsolar.com](mailto:Brian.hollingsworth@vivintsolar.com)

For Invoices :

Vivint Solar Accounts Payable  
[APSolar@vivintsolar.com](mailto:APSolar@vivintsolar.com)

For all other notices :

Name: Brian Hollingsworth  
Title: Director of Supply Chain  
Address: 4931 North 300 West  
Provo, UT 84604  
Phone: (801) 229-6476  
Email: [Brian.hollingsworth@vivintsolar.com](mailto:Brian.hollingsworth@vivintsolar.com)

*With a copy to :*

Vivint Solar Legal Department  
Address: 4931 North 300 West  
Provo, UT 84604  
Phone: (801) 705-8093  
Fax: (801) 765-5746  
Email: [solarlegal@vivintsolar.com](mailto:solarlegal@vivintsolar.com)

**Vivint, Inc.**

For Purchase Orders:

Name: Wayne Dupin  
Title: VP Supply Chain  
Address: 4931 North 300 West, Provo, Utah  
Phone: (801) 705-8068  
Email: [wdupin@vivint.com](mailto:wdupin@vivint.com)

For Invoices :

Name: Vivint Accounts Payable  
Title: N/A  
Address: 4931 North 300 West, Provo, Utah  
Phone: (801) 221-6760  
Email: [accountspayable@vivint.com](mailto:accountspayable@vivint.com)

For all other notices :

Name: David Bywater  
Title: Chief Operating Officer  
Address: 4931 North 300 West, Provo, Utah 84604  
Phone: (801) 705.86565  
Email: david.bywater@Vivint.com

*With a copy to :*

Name: Nathan Wilcox  
Title: General Counsel  
Address: 4931 North 300 West, Provo, Utah 84604  
E-Mail: nwilcox@vivint.com

**II. Vivint Solar and Vivint Representatives (for day-to-day operations and other, non-official matters) :**

Vivint Solar Developer, LLC

Name: Brian Hollingsworth  
Title: Director of Supply Chain  
Address: 4931 North 300 West  
Provo, UT 84604  
Phone: (801) 229-6476  
Email: [Brian.hollingsworth@vivintsolar.com](mailto:Brian.hollingsworth@vivintsolar.com)

Vivint, Inc.

Name: Wayne Dupin  
Title: VP Supply Chain  
Address: 4931 North 300 West, Provo, Utah  
Phone: (801) 705-8068  
Email: [wdupin@vivint.com](mailto:wdupin@vivint.com)

## EXHIBIT E

### SUPPLEMENTAL SERVICES

Pursuant to Section 10.1 of the Agreement, Vivint shall perform the Supplemental Services set forth in this Exhibit E.

1. Training. Vivint shall provide support as reasonably requested by Vivint Solar for technical training, installer training and other support to assist in the deployment and installation of Products by Vivint Solar.
2. Engineering Change Support. Vivint will provide Vivint Solar with new releases of modifications to the Products or engineering changes approved by Vivint Solar in accordance with Section 6.2 suitable for preparation by Vivint Solar for distribution to Vivint Solar's customers, at Vivint Solar's discretion.
3. Vivint Technical Development and Support Generally.
  - a. Vivint shall collaborate with Vivint Solar and to provide reasonable technical development support with respect to the ongoing development of the Products including: (i) communications hardware; (ii) systems integration; (iii) Product modifications to assist with fleet management and other Vivint Solar requests; and (iv) integration with new Vivint Solar products and services.
  - b. Vivint Solar may send to Vivint (i) requests for clarifications regarding the requirements of the Product installation manual and (ii) technical drawings and other information relating to Vivint Solar's proposed design or procedures for the installation of the Products, with the request that Vivint confirm that installation in accordance with such technical drawings or other information is consistent with the Product installation manual and therefore would not, on its own, constitute the basis for an exclusion under the applicable Warranty. Vivint shall promptly respond in writing to any such request. The failure of Vivint Solar to make any requests for clarifications or to send technical drawings or other information to Vivint shall not operate to limit Vivint's obligations under this Agreement or any Purchase Order.
  - c. To the extent not otherwise required of Vivint under the terms of the applicable Warranty hereunder, Vivint will use commercially reasonable efforts to provide Vivint Solar with technical assistance and support with respect to the Products, including (i) notifying Vivint Solar of any known or newly discovered defects, corrections, issues, improvements and new technology for the Products and proposed corrective approach, and (ii) notifying Vivint Solar of any software upgrades or other improvements as detailed further in Paragraphs 4 and 5 of this Exhibit E, and (iii) providing Vivint Solar timely access to spare and replacement Products that are compatible with the Products in the event the originally installed Product is no longer covered by the Warranty.
4. Software Upgrades.
  - a. *Performance of Software Upgrades*. Performance of all software upgrades (whether such software upgrades may be done remotely or must be completed on-site) shall be performed by Vivint's personnel. Vivint shall promptly perform such software upgrades following receipt of a request from Vivint Solar or following completion of the process set forth in Paragraph 4.b. of this Exhibit E.
  - b. *Recommendations and Approval Process for Software Upgrades*. At any time during the Term, each Party may provide recommendations to the other Party for making software upgrades to the Products. Prior to performing any upgrades to the Product software, and regardless of whether such Products are currently being utilized by Vivint Solar in connection with a Project, the Parties shall validate the software upgrade through testing agreed upon by the Parties, agree upon the date for commencing the software upgrade, and, subject to Paragraph 4.a. of this Exhibit E, agree upon the manner in which the software upgrade will be completed. Neither Party shall have the right to perform software upgrades without the Parties' agreement on the foregoing or otherwise without the prior written consent of the other Party.
5. Product Hardware Upgrades.
  - a. *Recommendations and Approval Process for Product Hardware Upgrades*. At any time during the Term, Vivint Solar may provide recommendations to Vivint for modifying the Product hardware in order to improve the customer's experience, including, without limitation, attaching additional devices to the originally-installed Product or replacing the originally-installed Product in its entirety with a new Product that is backwards compatible in all respects and having improved functionality and modernized style or design ("**Product Hardware Upgrade**"). Prior to performing any Product Hardware Upgrade, and regardless of whether such Products are currently being utilized by Vivint Solar in connection with a Project, the Parties shall agree upon (i) the

Specifications for the new Product, (ii) testing protocols for the new Product, (iii) the date on which any Product Hardware Upgrade will commence, and (iv) and, subject to Paragraph 5.b. of this Exhibit E, agree upon the manner in which the Product Hardware Upgrade will be completed.

- b. *Performance of Product Hardware Upgrades.* The development of all Product Hardware Upgrades agreed upon by the Parties pursuant to Paragraph 5.a. of this Exhibit E shall be performed by Vivint's personnel.
6. Price; Invoicing; Payment. Vivint Solar shall pay Vivint for Vivint's Fully Loaded Costs it incurs in connection with Vivint's performance of the Supplemental Services, without markup. Vivint shall invoice Vivint Solar quarterly the amounts payable pursuant to this Section 2.4., and Vivint Solar shall pay such invoices within thirty (30) days after the invoice date.

**EXHIBIT F**

**SERVICE LEVELS AND BUSINESS CONTINUITY**

*( To be added by the Parties following the Effective Date pursuant to Paragraph 6 of Exhibit E )*

Exhibit F

PRODUCT DEVELOPMENT AND SUPPLY AGREEMENT  
*Vivint Solar, Inc. and Vivint, Inc.*

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**EXHIBIT G**

**LIMITED WARRANTY**

Vivint, Inc. (“*Vivint*”) hereby represents and warrants that the Sky Panel, and any hardware and software components relating thereto or embedded therein, including the smart thermostat and sensors if purchased with the Sky Panel (“*Products*”) (a) shall be free of defects in workmanship, materials and design, (b) shall, at the time of delivery, be new and unused, (c) shall meet the applicable Product specification (“*Specification*”), and (d) shall, at the time of delivery, comply with all applicable Laws, Standards and Codes (“*Limited Product Warranty*”). The Limited Product Warranty covers any failure of an Product that is defective or otherwise does not conform to the Limited Product Warranty (“*Defective Product*”) for a period of one (1) year from the date of delivery to the original purchaser, or from the date of installation if Vivint installed the Product; provided, however, if Vivint receives longer warranty periods on certain components of the Product or software, the foregoing warranty period shall be the same as the warranty period received by Vivint on such components or software (the “*Product Warranty Period*”). This Limited Product Warranty also covers any new Products substituted for the originally-warranted Product in connection with a Product hardware upgrade by Vivint, and the Product Warranty Period on such new Products will commence upon delivery to the original purchaser or the date of installation if Vivint installed the Product.

During the Product Warranty Period, the Limited Product Warranty is freely transferable to a different owner (“*Transferee*”) as long as the Product (and any new Products substituted in connection with a hardware upgrade by Vivint) remains installed at the originally-installed end user location (“*Original Location*”).

During the Product Warranty Period, if Vivint Solar or the owner of the Products notifies Vivint of a defect, and Vivint confirms, through inspection, the existence of a defect that is covered by the Limited Product Warranty, as Vivint Solar’s or the Product owner’s sole remedy and recourse with respect to such defect, Vivint will, at its option, either repair or replace the Defective Product free of charge.

If Vivint elects to repair or replace the Defective Product, Vivint will use new parts in repairing or replacing the Defective Product. Vivint reserves the right to use parts or products of original or improved design in the repair or replacement of Defective Product provided they are backwards compatible with the solar photovoltaic project. If Vivint repairs or replaces a Defective Product, the Limited Product Warranty will continue to cover the repaired or replacement product for the remainder of the original Product Warranty Period or ninety (90) days from the date of Vivint’s return shipment of the repaired or replacement product, whichever is later. The Limited Product Warranty covers a replacement unit to replace the Defective Product, all parts, as well as all labor costs related to (1) removal of the Defective Product, (2) installation of a repaired or replacement Product, and (3) diagnostic tests to confirm proper functionality. To the extent applicable, the Limited Product Warranty also covers the costs of returning the Defective Product via Vivint’s RMA policy and procedure described further below, as well as shipping a repaired or replacement product from Vivint, via a non-expedited freight carrier selected by Vivint, to locations specified by the owner of the Defective Product. Risk of loss relating to a Product that has been removed for repair offsite shall pass to Vivint when the removal process begins and shall transfer back to the owner of the Product when reinstallation of the repaired Product is complete and the Product is confirmed functional and not defective.

The Products are designed to withstand normal operating conditions and typical wear and tear when used for their original intent and in compliance with the installation and operating instructions supplied with the original equipment. The Limited Product Warranty does not apply to, and Vivint will not be responsible for, any defect in or damage to any Product: (1) that has been misused, neglected, tampered with, altered, or otherwise damaged, either internally or externally by any person other than Vivint personnel; (2) that has been improperly installed, operated, handled or used by persons other than Vivint personnel, including use in an unsuitable environment, or use in a manner contrary to the Vivint User Manual or applicable laws or regulations; (3) that has been subjected to fire, water, generalized corrosion, biological infestations, acts of God, or input voltage that creates operating conditions beyond the maximum or minimum limits listed in the Product’s Specifications, including high input voltage from generators or lightning strikes; (4) that has been subjected to incidental or consequential damage caused by defects of other components of the solar system; or (5) if the original identification markings (including trademark or serial number) of such Product have been defaced, altered, or removed. This Limited Product Warranty does not cover cosmetic, technical or design defects, or shortcomings which do not influence or affect the operation, form, fit, or function of the Product. The Limited Product Warranty does not cover costs related to the removal, installation or troubleshooting of the owner’s electrical systems.

To obtain repair or replacement service, credit or refund (as applicable) under this Limited Product Warranty, the owner must contact Vivint, Inc.:

Chris Gera, VP Field Service  
4931 North 300 West Provo, Utah 84604  
Email: cgera@vivint.com  
801.229.6905

And

Wayne Dupin  
VP Supply Chain  
4931 North 300 West Provo, Utah 84604  
Email: wdupin@vivint.com  
Tel: 801.705.8068

THE LIMITED PRODUCT WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY VIVINT AND, WHERE PERMITTED BY LAW, IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR WARRANTIES AS TO THE ACCURACY, SUFFICIENCY OR SUITABILITY OF ANY TECHNICAL OR OTHER INFORMATION PROVIDED IN MANUALS OR OTHER DOCUMENTATION. IN NO EVENT WILL VIVINT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES, COSTS OR EXPENSES HOWEVER ARISING, WHETHER IN CONTRACT OR TORT, INCLUDING WITHOUT LIMITATION ANY ECONOMIC LOSSES OF ANY KIND, ANY LOSS OR DAMAGE TO PROPERTY, OR ANY PERSONAL INJURY.

To the extent any implied warranties are required under applicable law to apply to the Product, such implied warranties shall be limited in duration to the Product Warranty Period, to the extent permitted by applicable law. Some regions do not allow limitations or exclusions on implied warranties or on the duration of an implied warranty or on the limitation or exclusion of incidental or consequential damages, so the above limitation(s) or exclusion(s) may not apply. This Limited Product Warranty gives the owner specific legal rights, and the owner may have other rights that may vary from region to region.

## EXHIBIT H

### INSURANCE

Vivint will carry the following liability and property insurance and comply with the other insurance related requirements set out in this Exhibit H. Such insurance shall be with insurance companies having an A.M. Best Insurance financial strength and financial size rating category of A-VIII or better.

A. Workers' Compensation and Employers' Liability: Workers' Compensation as required by applicable Law, indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Vivint performs work. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident or for each illness or disease.

B. Commercial General Liability: Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form. The limit shall not be less than \$1,000,000 each occurrence and not less than \$2,000,000 annual General Aggregate with Products and Completed Operations coverage Aggregate of not less than \$2,000,000.

C. Auto Liability: Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, codes 7 and 8, for all owned, hired and non-owned autos. The limit shall not be less than \$1,000,000 each accident.

D. Excess Liability Insurance: Coverage shall be for not less than \$10,000,000 per occurrence and aggregate limit in excess of the Commercial General Liability, Auto Liability and Employers' Liability insurance policies.

E. Professional Liability Insurance: Errors and Omissions Liability insurance appropriate to Vivint's profession. Coverage shall be for a professional error, act, or omission arising out of the scope of services shown in the Agreement and the Purchase Order(s). The limit shall not be less than \$1,000,000 for each claim and not less than \$2,000,000 aggregate.

F. All-Risk Property Insurance: With sufficient limits to cover the replacement cost of all components, raw material and work in process, and the Unit Price for all finished goods prior to delivery.

G. Additional Insurance Provisions:

(i) The insurance certificates required under this Agreement shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to Vivint Solar. In the event a notice of cancellation is issued for any policy, Vivint will notify Vivint Solar of the cancellation and will provide replacement coverage prior to the cancellation. Certificates of each renewal of insurance required hereunder shall also be delivered to Vivint Solar prior to or promptly after each renewal.

(ii) All deductibles and self-insured retentions are the responsibility of Vivint and Vivint shall pay all premiums payable in respect to the insurance of Vivint required hereunder.

(iii) Vivint shall promptly notify Vivint Solar of any claim relating to the Products or the Project under (i) the All-Risk Property insurance policies for an amount in excess of US\$100,000 and (ii) the product liability coverage pursuant to the Commercial General Liability insurance policies for an amount in excess of US\$100,000.

(iv) All policies of liability insurance to be maintained by Vivint shall also be written or endorsed to include the following:

(1) with respect to the Commercial General Liability, Auto Liability and Excess Liability insurance, Vivint shall provide that the insurer waive any and all rights of subrogation or recovery which the insurer may have or acquire against Vivint Solar, its Affiliates;

(2) With respect to the Commercial General Liability insurance, to provide for a severability of interest and cross liability clause;

(3) that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Vivint;

(4) with the exception of the Worker's Compensation, Professional Liability and Employer's Liability insurance, to identify Vivint Solar as additional insureds for their legal liability arising out of the operations of Vivint; and

(5) Vivint Solar shall have no liability for the payment of any premiums under the insurance required to be maintained by Vivint hereunder.

**MARKETING AND CUSTOMER RELATIONS AGREEMENT**

This MARKETING AND CUSTOMER RELATIONS AGREEMENT (“*Agreement*”) is made and entered into as of September 30, 2014 (the “*Effective Date*”), by and between VIVINT SOLAR DEVELOPER, LLC, a Delaware limited liability company (together with its successors and permitted assigns, “*Vivint Solar*”), and VIVINT, INC., a Utah corporation (together with its successors and permitted assigns “*Vivint*”). Each of Vivint Solar and Vivint may also be referred to herein individually as a “*Party*”, and collectively as the “*Parties*”.

**RECITALS**

WHEREAS, Vivint Solar and Vivint are affiliate business entities, under the common control and ownership of 313 Acquisition LLC, a Delaware limited liability company.

WHEREAS, the Parties have been operated as an interrelated business enterprise, but are undertaking to separate their operations, and this Agreement sets forth the terms under which the Parties will engage in various cross-marketing and other potential customer and customer-focused efforts.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Any capitalized term used but not defined in this Agreement will have the meaning set forth for that term in the Master Framework Agreement of even date herewith between Vivint and Vivint Solar, Inc. (the “*Master Framework Agreement*”).

2. Provision of Services; Standard of Performance.

(a) *Services*.

(i) The performing Party will provide (or, subject to Section 6(b), cause one or more of its Affiliates, Subsidiaries or Subcontractors to provide) to the requesting Party the services specified in the service schedules (each, a “*Service*” and collectively, the “*Services*,” and each schedule, a “*Service Schedule*”), the form of which is attached as Exhibit 1.

(ii) If a Party desires the other Party to provide a new Service, the requesting Party will provide reasonable advance written notice of the desired new Service. The Parties will negotiate in good faith whether and on what terms the Party requested to provide the Service will provide such Service. If the Parties’ agree that the new Service will be provided, the Parties will agree upon and execute a Service Schedule describing the new Service, including the Fees applicable to such Service.

(b) *Performance Standards*. The performing Party will perform the Services with the same degree of care and diligence that it performs its own operations, in a diligent and workmanlike manner in accordance with industry standards and otherwise in accordance with all performance standards described in the applicable Service Schedule (the “*Performance Standards*”). The performing Party will ensure that any Subsidiaries or Subcontractors providing any Services comply with the Performance Standards.

(c) *Service Interruptions*. The performing Party will provide to the requesting Party reasonable advance notice of any scheduled interruption or other unavailability that is reasonably likely to materially interrupt or otherwise affect any Service.

3. Scope of Relationship. Subject to the Non-Competition Agreement of even date herewith between Vivint and Vivint Solar, Inc. (the “*Non-Compete Agreement*”):

(a) *Non-Exclusive*. The business relationship described in this Agreement is not exclusive and nothing in this Agreement shall prevent either Party from independently pursuing a market opportunity with any other party.

(b) *Reserved Rights* . Each Party reserves the right to (i) establish relationships with third parties to market and sell its products, and (ii) solicit orders directly from and sell directly to any customer.

(c) *Internal Promotion* . Each Party will inform and educate its organization about the nature of the business relationship between the Parties and the other Party's products and services.

#### 4. Payment.

(a) *Fees* . The requesting Party will pay to the performing Party the amount set forth for each Service as set forth in the applicable Service Schedule (the "*Fees*"), subject to the performing Party's performance of the Services in accordance with this Agreement and such Service Schedule.

(b) *Invoices* . The performing Party will issue invoices for Services no later than fifteen (15) days after the last day of each calendar month during the term of this Agreement for the Services provided by such Party to the requesting Party for that calendar month. If the requesting Party disputes in good faith any invoice, such Party will provide written notice to the performing Party and the Parties will negotiate in good faith to resolve the dispute. If the Parties cannot resolve the dispute after a reasonable period of good faith negotiation, either Party may submit the dispute for resolution under the dispute resolution procedures set forth in Section 9(c). The requesting Party will pay properly invoiced and undisputed Fees within thirty (30) days of receipt of the invoice by wire transfer to the performing Party at an account provided by such Party to the requesting Party.

(c) *Taxes* . Unless explicitly stated on a Service Schedule, the Fees are inclusive of all U.S. federal, state or local or non-U.S. sales, use, goods and services, value added or other similar Taxes or duties or other fees, however designated. If the provision of the Services or the relationship created between the Parties under this Agreement gives rise to any Tax (other than a Tax based on the performing Party's income), that Tax will be the responsibility of the performing Party, unless that Tax is explicitly excluded from the Fee and described on the applicable Service Schedule. The Parties will cooperate with each other in order to minimize Taxes subject to this Section 3(c) and to carry out the intent of this Agreement. Each Party is responsible for its own income, franchise, business and occupation and similar Taxes.

#### 5. Term and Termination; Extension, Termination and Reduction of Services.

##### (a) *Term* .

(i) This Agreement will commence on the Effective Date and will continue for a thirty-six (36) month period ( "*Initial Term* " ), renewing automatically from year-to-year (each a "*Renewal Term* " ) unless either Party provides written notice of non-renewal at least sixty (60) days before the expiration of the then current Initial Term or Renewal Term (collectively, the "*Term* " ).

(ii) If this Agreement should not be renewed pursuant to Section 5(a)(i), it will continue in full force and effect until the expiration date for all then-effective Services set forth in relevant Service Schedule, including any extension of such Services by the Parties in accordance with Section 5(b).

##### (b) *Services Extension, Termination or Reduction* .

(i) If the requesting Party desires to extend the term of any existing agreed Service, such Party will provide the performing Party with written notice of the desired extended term for such Service. If the Parties agree to extend the term for such Service, the Parties will amend the applicable Service Schedule.

(ii) *Services Termination or Reduction* . Services Schedule to this Agreement shall specify whether and on what terms a requesting Party may terminate or reduce the scope or quantity of such Services Schedules. Upon termination of any Service Schedule, the performing Party will no longer be obligated to provide the applicable Service. If the requesting Party so reduces any Services, the Parties will amend the applicable Service Schedule to reflect the reduction.

(c) *Termination of Agreement for Material Breach* . Either Party may terminate this Agreement upon written notice to the other Party if the other Party materially breaches any material term or condition of this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach.

##### (d) *Effect of Termination* . Upon termination or expiration of this Agreement:

(i) the Parties will cooperate to effect an orderly, efficient, effective and expeditious winding-up of the Services;

(ii) within ten (10) business days after the date of termination or expiration, the performing Party will return to the requesting Party any and all of the requesting Party's materials, equipment, and Confidential Information related to the Services, including all copies, then in the performing Party's possession or control;

(iii) the requesting Party will have no obligation to pay for any terminated Services performed after the effective date of the termination or expiration; and

(iv) the performing Party will have no further obligation to perform any Services under this Agreement or any Schedule.

Termination of this Agreement by either Party will not act as a waiver of any breach or as a release of either Party from any liability for any breach. Termination of this Agreement by a Party will be without prejudice to any other right or remedy of that Party under this Agreement or applicable Law.

(e) *Survival* . The following Sections will survive any termination of this Agreement: Sections 4(a) (with respect to amounts owed as of termination), 5, 9(c), 10, 11, 13, and 14.

6. Performing Party Personnel .

(a) *Personnel* . The performing Party will provide the Services using sufficient numbers of qualified personnel with appropriate experience and training to perform the Services, and will use commercially reasonable efforts to retain existing personnel with that experience and training or hire and train other qualified personnel to provide the Services.

(b) *Subcontractors* .

(i) Subject to the performing Party's obligations under Section 6(a), and solely if permitted pursuant to the applicable Service Schedule, the performing Party may use subcontractors, independent contractors, and/or consultants (collectively, "**Subcontractors**"), as useful or necessary in such Party's reasonable discretion, to perform the Services.

(ii) Any Affiliates, Subsidiaries or Subcontractors used to provide Services must: (x) meet the applicable Performance Standards; and (y) be bound in writing by confidentiality obligations at least as protective as those that bind the performing Party under the terms of the Master Framework Agreement. The performing Party will be responsible for any Services performed by it or its Subsidiaries or Subcontractors, including all such Persons' employees and consultants or other third Persons, and will be liable for any acts or omissions of those Persons that would be a breach of this Agreement if committed by the performing Party to the same extent as if the performing Party was performing (or failing to perform) itself. The requesting Party will not be responsible for any costs or expenses associated with the performance of Services by Subsidiaries or Subcontractors of the performing Party except as expressly set forth in a Service Schedule. The performing Party's use of a Subsidiary or Subcontractor to perform Services will not relieve such Party of its obligations under this Agreement. If the performing Party uses any Subsidiaries or Subcontractors to provide any Services, then the performing Party will ensure that those Subsidiaries and Subcontractors grant to the performing Party sufficient assignments, licenses and other rights to enable the performing Party to grant the assignments, licenses and other rights to the requesting Party as necessary in relation to the applicable Services and as set forth in this Agreement and the applicable Service Schedule.

7. Cooperation; Access .

(a) *Cooperation* . The Parties will reasonably cooperate in good faith with each other in connection with the provision of the Services.

(b) *Access* . The performing Party will make reasonably available during regular business hours (or otherwise upon reasonable prior written notice by the requesting Party to the performing Party) to the requesting Party or its Representatives all: (i) personnel designated by the performing Party to provide the Services; (ii) books and records maintained by the performing Party in connection with this Agreement and other information or materials reasonably requested by the requesting Party for the purpose of exercising general oversight and monitoring of the performance of the Services; and (iii) records that the performing Party has prepared or maintained in providing the Services in order for the requesting Party to verify the accuracy of the Fees and the proper performance of Services.

(c) *Security* . For any work performed on the requesting Party's premises, the performing Party will comply with the security, confidentiality, safety and health policies of the requesting Party. The performing Party will take commercially reasonable

precautions to prevent, and will be responsible for, any injury to any Persons (including employees of the requesting Party) or damage to property (including the requesting Party's property) arising from or relating to the performing Party's performance of the Services or the use by the performing Party of any of the requesting Party's equipment, tools, facility or other property in performing the Services.

8. Coordination Regarding Cross-Sales. Each Party shall notify the other Party as soon as reasonably possible of a successful cross-sale with the other Party's customer. The Parties shall develop procedures and protocols as they determine necessary from time to time during the Term relating to the addition of a Project to a location where Vivint Services are being performed or the addition of Vivint Services to an existing Project location in order to ensure that any calibrations, upgrades or other activities relating to the installed Product are completed efficiently and with minimal interruption to the existing services being provided by Vivint Solar or Vivint, as applicable, and the Parties shall follow such procedures and protocols.

9. Process Management: Meetings: Dispute Resolution.

(a) Marketing Managers. In order to facilitate the general intent and the terms of this Agreement, each of the Parties has designated the individual below as a marketing manager (each, a "**Marketing Manager**") to coordinate and manage the Services under this Agreement and to serve as the principal contact in connection with the Services:

For Vivint Solar: Chris Lundell  
801-229-7825  
chris.lundell@vivintsolar.com

For Vivint: Jefferson Lyman, Chief Marketing Officer  
801-229-7811  
jefferson.lyman@vivint.com

Each Party may change the designation of its Marketing Manager upon delivery of written notice to the other Party.

(b) Periodic Meetings. The Marketing Managers and each Party's relevant function leads will meet as often, and in no event less often than every quarter, to review the each Party's performance of the Services by function and to verify the Fees invoiced by the performing Party.

(c) Dispute Resolution. If a dispute arises regarding the interpretation or execution of this Agreement, the Marketing Managers will negotiate in good faith and attempt to resolve that dispute. If the Marketing Managers are unable to resolve a dispute within five (5) business days, then the Parties will refer the dispute to an executive of each of Vivint Solar and Vivint. If the executives are unable to resolve a dispute within two (2) weeks, then (and only then) either Party may pursue legal recourse pursuant to the terms of the Master Framework Agreement.

10. No Other Arrangements. The Parties acknowledge and agree that this Agreement and the Non-Compete Agreement are the sole and complete agreement of the Parties with respect to their marketing, cross-marketing and, together with the other Transaction Agreements, other potential customer and customer-focused efforts.

11. No Representations or Warranties. Neither Party makes any warranties, either express or implied, as to the Services or their accuracy or any result to be obtained therefrom, or any other subject matter of this Agreement; and each Party hereby expressly disclaims any implied warranties of merchantability, fitness for any particular purpose and any warranties that may arise from course of dealing, course of performance or usage of trade.

12. Trademarks and Trade Names

(a) License. During the term of this Agreement, each Party ("**Licensor**") grants to the other ("**Licensee**") the right to use the trademarks, marks, and trade names that Licensor may adopt from time to time ("**Marks**") solely in connection with the performance of the activities that are permitted by this Agreement.

(b) Use. Licensee will apply, use, and reproduce at least one of the Marks, in the size, place, and manner Licensor may indicate from time to time, on each copy of promotional materials, including without limitation, advertisements, sales literature, and promotional materials. Licensee will use such Marks only in a manner that complies in all material respects with Licensor's trademark usage policies in effect from time to time.

(c) *Assignment of Goodwill* . If Licensee, in the course of performing its services hereunder, acquires any goodwill or reputation in any of the Marks, all such goodwill or reputation will automatically vest in Licensor when and as, on an on-going basis, such acquisition of goodwill or reputation occurs, as well as at the expiration or termination of this Agreement, without any separate payment or other consideration of any kind to Licensee, and Licensee agrees to take all such actions necessary to effect such vesting.

13. Indemnification; Limitation of Liability; Other .

(a) *Indemnification by Vivint* . Except to the extent directly caused by the negligence or willful misconduct of Vivint Solar, and without limiting any other Transaction Agreement, Vivint hereby agrees to defend, pay, indemnify, and hold Vivint Solar (and its Representatives, Subsidiaries, and other Affiliates, other than Vivint and all direct and indirect subsidiaries of APX Parent Holdco, Inc.) and its Subcontractors harmless from and against any and all claims, demands, proceedings, judgments, and other liabilities of every kind, and all reasonable expenses incurred in investigation and resisting the same (including reasonable attorneys' fees), resulting from or in connection with all third Person Actions arising from or relating to: (i) the gross negligence or willful misconduct of Vivint, Vivint's Representatives, Subsidiaries or Subcontractors, or any third Person performing Services on behalf of Vivint under this Agreement; or (ii) the failure by Vivint to comply with its obligations to any Vivint employee, including payment of wages, provision of benefits, and payment of employment Taxes.

(b) *Indemnification by Vivint Solar* . Except to the extent directly caused by the negligence or willful misconduct of Vivint, and without limiting any other Transaction Agreement, Vivint Solar hereby agrees to defend, pay, indemnify, and hold Vivint (and its Representatives, Subsidiaries, and other Affiliates, other than Vivint Solar and all direct and indirect subsidiaries of Vivint Solar, Inc.) and its Subcontractors harmless from and against any and all claims, demands, proceedings, judgments, and other liabilities of every kind, and all reasonable expenses incurred in investigation and resisting the same (including reasonable attorneys' fees), resulting from or in connection with all third Person Actions arising from or relating to: (i) the gross negligence or willful misconduct of Vivint Solar, Vivint Solar's Representatives, Subsidiaries or Subcontractors, or any third Person performing Services on behalf of Vivint Solar under this Agreement; or (ii) the failure by Vivint Solar to comply with its obligations to any Vivint Solar employee, including payment of wages, provision of benefits, and payment of employment Taxes.

(c) *Indemnification Process* . If either Party seeks indemnification under this Section 13 , then that Party will promptly notify the indemnifying Party in writing of the Action for which indemnification is sought, but the failure to give such notice will not relieve the indemnifying Party of its obligations under this Agreement except to the extent that the indemnifying Party was actually and materially prejudiced by that failure. The indemnifying Party will have the right to control the defense and settlement of the Action, but the indemnified Party may, at its option and expense, participate and appear on an equal footing with the indemnifying Party. The indemnifying Party may not settle the Action without the prior written approval of the indemnified Party, which approval will not be unreasonably withheld, conditioned or delayed.

(d) *Limitation of Liability* . Except for any breach by a Party of the confidentiality provisions of the Master Framework Agreement and liability arising from the gross negligence or willful misconduct of a Party (including liability arising from damage to personal property or the death or injury of any Person caused by the gross negligence or willful misconduct of a Party), neither Party will have any liability to the other Party under this Agreement for compensatory, punitive, special, incidental or consequential damages (including loss of profits), regardless of the circumstances under which those damages arose, even if advised of the possibility of those damages. Except for: (i) any breach by a Party of the confidentiality provisions of the Master Framework Agreement; (ii) each Party's obligation to indemnify the other in accordance with this Section 13 ; and (iii) and liability arising from the gross negligence or willful misconduct of a Party (including liability arising from damage to personal property or the death or injury of any Person caused by the gross negligence or willful misconduct of a Party), the maximum liability of either Party under this Agreement, including with respect to the performance or breach of this Agreement, whether in contract, in tort (including negligence and strict liability) or otherwise, will not exceed greater of \$5,000,000 or the aggregate amount of all Fees paid hereunder.

14. Master Framework Agreement . This Agreement is governed by the Master Framework Agreement, including the provisions of Sections 4 (Confidentiality) and 6 (Miscellaneous) of the Master Framework Agreement.

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGES TO MARKETING AND CUSTOMER RELATIONS AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Marketing and Customer Relations Agreement as of the date first written above.

**VIVINT SOLAR:**

VIVINT SOLAR DEVELOPER, LLC  
a Delaware limited liability company

By: /s/ Greg Butterfield

Name: Greg Butterfield

Title: Chief Executive Officer

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

**VIVINT:**

VIVINT, INC.,  
a Utah corporation

By: /s/ Alex Dunn  
Name: Alex Dunn  
Title: President

**Exhibit 1**

**Form of Service Schedule to Marketing and Customer Relations Agreement**

- 1. **Schedule # :** [ \_\_\_\_ ]
- 2. **Start/End Date:** The Services described in this Schedule will begin on [DATE] and end on [DATE], unless otherwise agreed in writing [(email with mutual acknowledgement of the change acceptable)] between the Parties.
- 3. **Summary of Services:**

Service Name	Description	Fee
	[Describe the Service(s) to be provided in appropriate detail.]	

- 4. **Performance Standards:** [State minimum performance expected for the Services, if applicable.]
- 5. **Reporting Obligations:** [State minimum expected reporting obligation, or attach form or report, if applicable.]
- 6. **Project Manager:**
  - Vivint Solar: [name]
  - Vivint: [name]
- 7. **Permitted to Use Subcontractors?**
  - Vivint Solar: [Yes][No][N/A]
  - Vivint: [Yes][No][N/A]

**TRADEMARK ASSIGNMENT AGREEMENT**

This TRADEMARK ASSIGNMENT AGREEMENT (this “*Assignment Agreement*”) is made and entered into as of September 30, 2014 (“*Effective Date*”) by and between VIVINT, INC., a Utah corporation, with its principal office 4931 North 300 West, Provo, Utah 84604 (“*Assignor*”), and VIVINT SOLAR LICENSING LLC, a Delaware limited liability company, with its principal office at 4931 North 300 West, Provo, Utah 84604 (“*Assignee*”, each of Assignor and Assignee a “*Party*”, and collectively, the “*Parties*”).

RECITALS

WHEREAS, Assignor and Vivint Solar, Inc. (“*Vivint Solar*”) are affiliate business entities, under the common control and ownership of 313 Acquisition, LLC, a Delaware limited liability company;

WHEREAS, Assignor owns the name and mark “Vivint Solar,” including those United States and foreign trademarks set forth on **Schedule A** attached hereto, and all common-law rights associated therewith and all goodwill of the business associated therewith and symbolized thereby (collectively, the “*Marks*”);

WHEREAS, the Marks were previously licensed by Assignor to Vivint Solar beginning on June 1, 2011, pursuant to that certain Trademark / Service Mark License Agreement, dated of June 1, 2011, as amended and restated by that certain Amended and Restated Trademark / Service Mark License Agreement, dated as of June 10, 2013 (the “*Prior License*”);

WHEREAS, Assignor and Vivint Solar entered into that certain Limited Liability Company Agreement, dated on or about the date hereof, pursuant to which, *inter alia*, Assignor and Vivint Solar are members and Vivint Solar is manager of the Assignee;

WHEREAS, Assignor wishes to hereby assign to Assignee, and Assignee wishes to acquire from Assignor, all right, title and interest to the Marks;

WHEREAS, simultaneous with this Agreement, Assignor and Vivint Solar are terminating the Prior License, and Assignee is exclusively licensing the Marks to Vivint Solar pursuant to that Trademark License Agreement dated as of the date hereof (the “*Vivint Solar License*”); and

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby established, and in consideration of the terms and conditions set forth herein, the Parties agree as follows:

1. Definitions. Capitalized terms not otherwise defined in this Assignment Agreement
-

will have the following meanings:

(a) “ **Assigned Property** ” means the Marks, and all trademark, copyright, trade dress and similar rights, if any, incorporated in or protecting the Marks, including any logos or graphic elements included in the Marks.

(b) “ **Encumbrance** ” means any equitable interest, mortgage, lien, option (including any right to acquire, right of pre-emption or conversion), pledge, hypothecation, security interest, title retention, easement, encroachment, right of first refusal or negotiation, adverse ownership claim or restriction of any kind, including any restriction on transfer assignment or granting as security, or relating to quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership, or any agreement to create any of the foregoing.

(c) “ **Marks** ” means the trademarks listed on Schedule A. For clarity, such Marks include only the name and mark “Vivint Solar” as a whole.

2. Assignment to Vivint Solar; Restrictions. Assignor hereby irrevocably and unconditionally assigns to Assignee, all of Assignor’s right, title, and interest in and to the Assigned Property, together with the goodwill of the business symbolized by the Marks, for the purpose of granting the Vivint Solar License to Vivint Solar, as successor of the business to which the Marks relate. Assignor further irrevocably and unconditionally assigns to Assignee the right to bring all claims for past, present, and future infringement, misappropriation, or other violation of the Assigned Property, including all rights to sue for and to receive and recover all profits and damages accruing from an infringement, misappropriation, or other violation as well as the right to grant releases for past infringements. For clarity, the foregoing assignment does not include or assign to Assignee any of Assignor’s right, title or interest in any other names or marks containing or comprising the term “Vivint,” all of which are retained by Assignor. Assignor and Assignee will execute the short-form assignment attached as Exhibit A.

3. Further Assurances. Assignor will take all actions and execute all documents as Assignee may reasonably request, at the expense of Vivint Solar, to:

(a) effectuate the above transfer to Assignee of the Assigned Property, and the vesting of complete and exclusive ownership in Assignee of the Assigned Property; and

(b) provide Assignee with evidence of Assignor’s rights and priority in and Assignor’s use of the Assigned Property prior to the Effective Date, in any judicial, opposition, or other proceedings in respect of the Assigned Property, including for revocation of any of Assignor’s rights in the Assigned Property.

4. Representations and Warranties. Assignor represents and warrants to Assignee that: (a) Assignor exclusively owns all right, title and interest in and to the applications on **Schedule A**; (b) Assignor has not granted (and during the term of, and for five (5) years after termination of, the Vivint Solar License) will not grant any licenses or other rights to the Marks to any third party; (c) Assignor has not granted to any third party any Encumbrance in the Assigned Property other than as set forth on **Schedule B**; (d) there are no legal actions, investigations, claims, or proceedings pending or threatened in writing against Assignor relating

to the Assigned Property, other than as set forth on Schedule B; (e) to the knowledge of Assignor, the Assigned Property does not violate any trademark, trade dress, copyright or similar right of any third party under the laws of the United States of America or any state or territory thereof (but not, for the avoidance of doubt, the laws of any foreign country) and (f) Assignor will not at any point after the Effective Date during the term of, and for five (5) years after termination of, the Vivint Solar License challenge the validity of the transfer or of Assignee's rights in the Assigned Property. Assignee agrees that, except for and subject to the above representations and warranties, the Assigned Property is assigned to Assignee on an "as is" and "where is" basis, and Assignor expressly disclaims any and all other representations and warranties of any kind, either express or implied, including any warranties of validity, enforceability or infringement or dilution of any third-party rights.

5. Indemnification. Assignor will defend, indemnify, and hold harmless Assignee, and Assignee's officers, directors, shareholders, successors, and assigns, from and against all losses, liabilities, and costs including, without limitation, reasonable attorneys' fees, expenses, penalties, judgments, claims and demands of every kind and character that Assignee, its officers, directors, shareholders, successors, and assigns may incur, suffer, or be required to pay arising out of, based upon, or by reason of the breach by Assignor of any of the representations or warranties made by Assignor in Section 4 of this Assignment Agreement.

6. Miscellaneous.

(a) *Expenses*. All costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with this Assignment Agreement will be paid by the Party incurring those costs and expenses.

(b) *Arms-Length*. Each Party acknowledges and agrees that the Assignment Agreement is the product of an arm's-length negotiation, without duress, coercion, or collusion, and will be interpreted as agreements between two Parties of equal bargaining strength. It is the Parties' intention that the Assignment Agreement reflects the conditions which would be obtained between comparable, independent persons in substantially similar transactions (taking into account the relative responsibilities and risks between the Parties) and comparable circumstances (taking into account the location, market, and economic conditions), thereby providing the closest approximation of the workings of the open market.

(c) *Entire Agreement*. This Assignment Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written negotiations, communications, discussions, and correspondence pertaining to the subject matter of this Assignment Agreement. The Parties agree that the short form assignment attached hereto as Exhibit A is entered into solely for recordation purposes, and that in the event of any conflict between such assignment and this Assignment Agreement, the terms of this Assignment Agreement shall control.

(d) *Headings, "including."* The article and section headings and any table of contents in the Agreement are for reference and convenience only and will not be considered in the interpretation of any of the Assignment Agreement. The term "including" means by way of example and not of limitation.

(e) *Amendments and Waivers* . This Assignment Agreement may only be amended or modified by an instrument in writing signed by each Party's President or Chief Executive Officer or Managing Member, as applicable.

(f) *Binding Effect* . This Assignment Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and permitted assigns. The Parties agree that Vivint Solar will be a third-party beneficiary of Sections 3-5 of this Assignment Agreement, with the right to enforce same directly against Assignor without the consent of Assignee, and that any recovery obtained by Vivint Solar when acting as a third-party beneficiary shall be solely for the benefit of (and will be paid directly to) Vivint Solar.

(g) *Governing Law* . The interpretation and enforceability of this Assignment Agreement and the rights and liabilities of the Parties under this Assignment Agreement will be governed by the laws of the State of Utah without giving effect to any principles of conflict of laws.

(h) *Jurisdiction* . Each Party hereby irrevocably submits to the personal jurisdiction of any state or federal court sitting in the State of Utah, County of Salt Lake, in any suit, action or proceeding arising out of or relating to any of this Assignment Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which that Party may raise now, or later have, to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Each Party agrees that, to the fullest extent permitted by applicable law, a final judgment in any such suit, action, or proceeding brought in such a court will be conclusive and binding upon such Party, and may be enforced in any court of the jurisdiction in which such Party is or may be subject by a suit upon such judgment.

(i) *WAIVER OF JURY TRIAL* . EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS ASSIGNMENT AGREEMENT, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY EITHER PARTY AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY HEREBY AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE PREVIOUS SENTENCE, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM, OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF ANY PORTION OF THIS ASSIGNMENT AGREEMENT. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENT, RENEWAL, SUPPLEMENT, OR MODIFICATION TO THIS ASSIGNMENT AGREEMENT.

(j) *Specific Performance* . The Parties agree that irreparable damage would occur if any provision of the Assignment Agreement were not performed in accordance with the terms of the Assignment Agreement, and that the Parties will be entitled to seek specific

performance of the terms of the Assignment Agreement, in addition to any other remedy to which they are entitled at law or in equity.

(k) *Attorneys' Fees*

. In any suit, action, counterclaim, or arbitration brought relating to this Assignment Agreement or the breach or alleged breach of this Assignment Agreement, the prevailing Party will be entitled to recover a reasonable allowance for attorneys' fees and litigation expenses. For purposes of this Section 7(k), "prevailing Party" will mean: (a) a prevailing Party in any litigation as determined by a court of competent jurisdiction; and (b) a Party who agrees to dismiss an action or proceeding with prejudice upon the other's payment of the sums allegedly due or performance of covenants allegedly breached.

(l) *Severability* . If any provision of the Assignment Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, that provision will be enforced to the fullest extent permitted by applicable law, and the remainder of the Assignment Agreement will remain in full force and effect. If the time period or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum time period or scope that that court deems enforceable, then that court will reduce the time period or scope to the maximum time period or scope permitted by law. If the geographic region or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum geographic region or scope that that court deems enforceable, then that court will reduce the geographic region or scope to the maximum time period or scope permitted by law.

(m) *Counterparts* . The Assignment Agreement and any document related to the Assignment Agreement may be executed by the Parties on any number of separate counterparts, by facsimile or email, and all of those counterparts taken together will be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or portable document format (".pdf") signature page will constitute an original for the purposes of this Section 7(m).

(n) *Force Majeure*. Neither Party will be in breach or default under this Assignment Agreement by reason of any failure or delay in the performance of its obligations under this Assignment Agreement where the failure or delay is due to any unforeseen cause beyond its control, including civil disturbances, riot, rebellion, invasion, epidemic, war, terrorism, embargo, natural disaster, acts of God, flood, fire, sabotage, other events or any other circumstances or causes beyond that Party's control; provided, however, that the delayed Party gives the other Party prompt written notice of the failure or delay and the reason for that failure or delay and uses its reasonable efforts to avoid or limit the resulting failure or delay. Subject to the foregoing sentence, the period of performance for the delayed obligation will be extended by the duration of the delay.

[SIGNATURE PAGES FOLLOW]



**ASSIGNEE :**

**VIVINT SOLAR LICENSING, LLC,**  
a Delaware limited liability company

By: VIVINT, INC.,  
a Utah corporation,  
its Managing Member

By: /s/ Alex Dunn

Name: Alex Dunn

Title: President

**1.**

TRADEMARK ASSIGNMENT  
(*Vivint Solar Licensing, LLC*)

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**EXHIBIT A**

**THIS TRADEMARK ASSIGNMENT AGREEMENT** (this "Assignment") is made and entered into as of September \_\_, 2014 ("Effective Date") by and between **VIVINT, INC.**, a Utah corporation, with its principal office 4931 North 300 West, Provo, Utah 84604 ("Assignor"), and **VIVINT SOLAR LICENSING LLC**, a Delaware limited liability company, with its principal office at 4931 North 300 West, Provo, Utah 84604 ("Assignee"), each of Assignor and Assignee a "Party", and collectively, the "Parties").

**WHEREAS**, Assignor owns the name and mark "Vivint Solar," including those United States and foreign trademarks set forth on Schedule A attached hereto, and all common-law rights associated therewith and all goodwill of the business associated therewith and symbolized thereby (collectively, the "Marks");

**WHEREAS**, Assignor wishes to assign to Assignee, and Assignee wishes to acquire from Assignor, all right, title and interest to the Marks; and

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

1. Assignor hereby irrevocably and unconditionally assigns to Assignee, all of Assignor's right, title, and interest in and to the Marks, together with the goodwill of the business symbolized by the Marks, for the purpose of granting the Vivint Solar License to Vivint Solar, as successor of the business to which the Marks relate. Assignor further irrevocably and unconditionally assigns to Assignee the right to bring all claims for past, present, and future infringement, misappropriation, or other violation of the Marks, including all rights to sue for and to receive and recover all profits and damages accruing from an infringement, misappropriation, or other violation as well as the right to grant releases for past infringements. For clarity, the foregoing assignment does not include or assign to Assignee any of Assignor's right, title or interest in any other names or marks containing or comprising the term "Vivint," all of which are retained by Assignor.

2. Assignor hereby requests the United States Commissioner of Patents and Trademarks, and any corresponding entities or agencies in any applicable foreign jurisdictions, to record Assignee as the assignee and owner of the Marks.

3. This Assignment Agreement shall be construed and interpreted in accordance with the laws of the State of Utah without giving effect to any principles of conflict of laws.

*[Remainder of the page intentionally left blank]*

**IN WITNESS WHEREOF**, Assignor and Assignee have caused this Assignment Agreement to be executed by their duly authorized representatives as of the Effective Date.

**ASSIGNOR :**

**VIVINT, INC.,**  
a Utah corporation

By: \_\_\_\_\_  
Name: Alex Dunn  
Title: President

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

**ASSIGNEE :**

**VIVINT SOLAR LICENSING, LLC,**  
a Delaware limited liability company

By: VIVINT, INC.,  
a Utah corporation,  
its Managing Member

By: \_\_\_\_\_  
Name: Alex Dunn  
Title: President

**SCHEDULE A**

**MARKS**

MARKS	REGISTRATION OR APPLICATION NUMBER
VIVINT.SOLAR	85/427427
VIVINT.SOLAR	85/427420
VIVINT SOLAR	85/427430
VIVINT SOLAR	85/427389
VIVINT SOLAR	85/427422
VIVINT SOLAR	85/427413
VIVINT SOLAR	85/427400
VIVINT SOLAR	85/427393
VIVINT.SOLAR	85/427404

## SCHEDULE B

The following Encumbrances are in place as of the date hereof, and shall be released simultaneously with the execution of this Agreement or promptly thereafter.

1. Amended and Restated Credit Agreement dated as of June 28, 2013 among APX Group, Inc., APX Group Holdings, Inc., the other guarantors party thereto, each lender from time to time party thereto and Bank of America, N.A., as Administrative Agent, as L/C Issuer and Swing Line Lender (as amended, the "Credit Agreement ")
2. Indenture dated as of November 16, 2012, relating to \$925,000,000 6.375% Senior Secured Notes due 2019, among APX Group Inc., the guarantors from time to time party thereto and Wilmington Trust, National Association, as Trustee and Collateral Agent (as amended, the "6.375% Senior Secured Notes Indenture")
3. Indenture dated as of November 16, 2012, relating to \$380,000,000 8.75% Senior Notes due 2020, among APX Group Inc., the guarantors from time to time party thereto and Wilmington Trust, National Association, as Trustee and Collateral Agent (as amended, the "8.75% Senior Notes Indenture")

## TRADEMARK ASSIGNMENT AGREEMENT

This TRADEMARK ASSIGNMENT AGREEMENT (this “*Assignment Agreement*”) is made and entered into as of September 30, 2014 (“*Effective Date*”) by and between VIVINT, INC., a Utah corporation, with its principal office 4931 North 300 West, Provo, Utah 84604 (“*Assignor*”), and VIVINT SOLAR, INC., a Delaware corporation (f/k/a V Solar Holdings, Inc.) (“*Assignee*”, each of Assignor and Assignee a “*Party*”, and collectively, the “*Parties*”).

### RECITALS

WHEREAS, Assignor wishes to hereby assign to Assignee, and Assignee wishes to acquire from Assignor, any and all right, title and interest that Assignor owns in the trademarks listed on **Schedule A** attached hereto, and all common-law rights associated therewith and all goodwill of the business associated therewith and symbolized thereby (collectively, the “*Marks*”);

WHEREAS, Assignor and Assignee are parties to that certain Trademark / Service Mark License Agreement, dated of June 1, 2011, as amended and restated by that certain Amended and Restated Trademark / Service Mark License Agreement, dated as of June 10, 2013 (the “*Prior License*”), which is being terminated by the Parties;

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby established, and in consideration of the terms and conditions set forth herein, the Parties agree as follows:

1. Definitions. Capitalized terms not otherwise defined in this Assignment Agreement will have the following meanings:

(a) “*Assigned Property*” means the Marks, and all trademark, copyright, trade dress and similar rights, if any, incorporated in or protecting the Marks, including any logos or graphic elements included in the Marks.

(b) “*Marks*” means the trademarks listed on Schedule A.

2. Assignment to Vivint Solar; Restrictions.

(a) Assignor hereby irrevocably and unconditionally assigns to Assignee, all of Assignor’s right, title, and interest in and to the Assigned Property, together with the goodwill of the business symbolized by the Marks, as successor of the business to which the Marks relate. Assignor further irrevocably and unconditionally assigns to Assignee the right to bring all claims for past, present, and future infringement, misappropriation, or other violation of the Assigned Property, including all rights to sue for and to receive and recover all profits and damages accruing from an infringement, misappropriation, or other violation as well as the right to grant

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releases for past infringements. Assignor and Assignee will execute the short-form assignment attached as Exhibit A. The Prior License will terminate as of the Effective Date.

(b) The Parties hereby amend the Prior License, pursuant to Section 13(d) thereof, to (i) permit termination of the Prior License under Section 7 upon the Parties' mutual consent and (ii) delete Section 13(o), such that no provisions of the Prior License shall survive its termination. Effective immediately after the effect of the above amendment, the Parties hereby mutually agree to terminate the Prior License.

3. Further Assurances. Assignor will take all actions and execute all documents as Assignee may reasonably request, at the expense of Vivint Solar, to:

(a) effectuate the above transfer to Assignee of the Assigned Property, and the vesting of complete and exclusive ownership in Assignee of the Assigned Property; and

(b) provide Assignee with evidence of Assignor's rights and priority in and Assignor's use of the Assigned Property prior to the Effective Date, in any judicial, opposition, or other proceedings in respect of the Assigned Property, including for revocation of any of Assignor's rights in the Assigned Property.

4. No Representations and Warranties. Assignee agrees that the Assigned Property is assigned to Assignee on an "as is" and "where is" basis, and Assignor expressly disclaims any and all other representations and warranties of any kind, either express or implied, including any warranties of validity, enforceability or infringement or dilution of any third-party rights.

5. Miscellaneous.

(a) *Expenses*. All costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with this Assignment Agreement will be paid by the Party incurring those costs and expenses.

(b) *Arms-Length*. Each Party acknowledges and agrees that the Assignment Agreement is the product of an arm's-length negotiation, without duress, coercion, or collusion, and will be interpreted as agreements between two Parties of equal bargaining strength. It is the Parties' intention that the Assignment Agreement reflects the conditions which would be obtained between comparable, independent persons in substantially similar transactions (taking into account the relative responsibilities and risks between the Parties) and comparable circumstances (taking into account the location, market, and economic conditions), thereby providing the closest approximation of the workings of the open market.

(c) *Entire Agreement*. This Assignment Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written negotiations, communications, discussions, and correspondence pertaining to the subject matter of this Assignment Agreement. The Parties agree that the short form assignment attached hereto as Exhibit A is entered into solely for recordation purposes, and that in the event of any conflict between such assignment and this Assignment Agreement, the terms of this Assignment Agreement shall control.

(d) *Headings, "including."* The article and section headings and any table of contents in the Agreement are for reference and convenience only and will not be considered in the interpretation of any of the Assignment Agreement. The term "including" means by way of example and not of limitation.

(e) *Amendments and Waivers* . This Assignment Agreement may only be amended or modified by an instrument in writing signed by each Party's President or Chief Executive Officer or Managing Member, as applicable.

(f) *Binding Effect* . This Assignment Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and permitted assigns.

(g) *Governing Law* . The interpretation and enforceability of this Assignment Agreement and the rights and liabilities of the Parties under this Assignment Agreement will be governed by the laws of the State of Utah without giving effect to any principles of conflict of laws.

(h) *Jurisdiction* . Each Party hereby irrevocably submits to the personal jurisdiction of any state or federal court sitting in the State of Utah, County of Salt Lake, in any suit, action or proceeding arising out of or relating to any of this Assignment Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which that Party may raise now, or later have, to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Each Party agrees that, to the fullest extent permitted by applicable law, a final judgment in any such suit, action, or proceeding brought in such a court will be conclusive and binding upon such Party, and may be enforced in any court of the jurisdiction in which such Party is or may be subject by a suit upon such judgment.

(i) *WAIVER OF JURY TRIAL* . EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS ASSIGNMENT AGREEMENT, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY EITHER PARTY AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY HEREBY AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE PREVIOUS SENTENCE, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM, OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF ANY PORTION OF THIS ASSIGNMENT AGREEMENT. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENT, RENEWAL, SUPPLEMENT, OR MODIFICATION TO THIS ASSIGNMENT AGREEMENT.

(j) *Specific Performance* . The Parties agree that irreparable damage would occur if any provision of the Assignment Agreement were not performed in accordance with the

terms of the Assignment Agreement, and that the Parties will be entitled to seek specific performance of the terms of the Assignment Agreement, in addition to any other remedy to which they are entitled at law or in equity.

(k) *Attorneys' Fees*

. In any suit, action, counterclaim, or arbitration brought relating to this Assignment Agreement or the breach or alleged breach of this Assignment Agreement, the prevailing Party will be entitled to recover a reasonable allowance for attorneys' fees and litigation expenses. For purposes of this Section 7(k), "prevailing Party" will mean: (a) a prevailing Party in any litigation as determined by a court of competent jurisdiction; and (b) a Party who agrees to dismiss an action or proceeding with prejudice upon the other's payment of the sums allegedly due or performance of covenants allegedly breached.

(l) *Severability* . If any provision of the Assignment Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, that provision will be enforced to the fullest extent permitted by applicable law, and the remainder of the Assignment Agreement will remain in full force and effect. If the time period or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum time period or scope that that court deems enforceable, then that court will reduce the time period or scope to the maximum time period or scope permitted by law. If the geographic region or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum geographic region or scope that that court deems enforceable, then that court will reduce the geographic region or scope to the maximum time period or scope permitted by law.

(m) *Counterparts* . The Assignment Agreement and any document related to the Assignment Agreement may be executed by the Parties on any number of separate counterparts, by facsimile or email, and all of those counterparts taken together will be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or portable document format (".pdf") signature page will constitute an original for the purposes of this Section 7(m).

(n) *Force Majeure*. Neither Party will be in breach or default under this Assignment Agreement by reason of any failure or delay in the performance of its obligations under this Assignment Agreement where the failure or delay is due to any unforeseen cause beyond its control, including civil disturbances, riot, rebellion, invasion, epidemic, war, terrorism, embargo, natural disaster, acts of God, flood, fire, sabotage, other events or any other circumstances or causes beyond that Party's control; provided, however, that the delayed Party gives the other Party prompt written notice of the failure or delay and the reason for that failure or delay and uses its reasonable efforts to avoid or limit the resulting failure or delay. Subject to the foregoing sentence, the period of performance for the delayed obligation will be extended by the duration of the delay.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF, Assignor and Assignee have caused this Trademark Assignment Agreement to be executed by their duly authorized representatives as of the Effective Date.**

**ASSIGNOR :**

**VIVINT, INC.,**  
a Utah corporation

By: /s/ Alex Dunn

Name: Alex Dunn

Title: President

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

**ASSIGNEE :**

**Vivint Solar, Inc .,**  
a Delaware corporation

By: /s/ Greg Butterfield  
Name: Greg Butterfield  
Title: Chief Executive Officer

**1.**

TRADEMARK ASSIGNMENT  
(*Vivint Solar, Inc.*)

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**EXHIBIT A**

**THIS TRADEMARK ASSIGNMENT AGREEMENT** (this “Assignment”) is made and entered into as of September \_\_, 2014 (“Effective Date”) by and between **VIVINT, INC.**, a Utah corporation, with its principal office 4931 North 300 West, Provo, Utah 84604 (“Assignor”), and **VIVINT SOLAR, INC.**, a Delaware corporation (f/k/a V Solar Holdings, Inc.) (“Assignee”, each of Assignor and Assignee a “Party”, and collectively, the “Parties”).

**WHEREAS**, Assignor wishes to hereby assign to Assignee, and Assignee wishes to acquire from Assignor, any and all right, title and interest that Assignor owns in the trademarks listed on **Schedule A** attached hereto, and all common-law rights associated therewith and all goodwill of the business associated therewith and symbolized thereby (collectively, the “**Marks**”);

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

1. Assignor hereby irrevocably and unconditionally assigns to Assignee, all of Assignor’s right, title, and interest in and to the Marks, together with the goodwill of the business symbolized by the Marks, as successor of the business to which the Marks relate. Assignor further irrevocably and unconditionally assigns to Assignee the right to bring all claims for past, present, and future infringement, misappropriation, or other violation of the Marks, including all rights to sue for and to receive and recover all profits and damages accruing from an infringement, misappropriation, or other violation as well as the right to grant releases for past infringements.

2. Assignor hereby requests the United States Commissioner of Patents and Trademarks, and any corresponding entities or agencies in any applicable foreign jurisdictions, to record Assignee as the assignee and owner of the Marks.

3. This Assignment Agreement shall be construed and interpreted in accordance with the laws of the State of Utah without giving effect to any principles of conflict of laws.

*[Remainder of the page intentionally left blank]*

**IN WITNESS WHEREOF**, Assignor and Assignee have caused this Assignment Agreement to be executed by their duly authorized representatives as of the Effective Date.

**ASSIGNOR :**

**VIVINT, INC.,**  
a Utah corporation

By: \_\_\_\_\_  
Name: Alex Dunn  
Title: President

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

**ASSIGNEE :**

**VIVINT SOLAR, INC.**  
a Delaware corporation

By: \_\_\_\_\_  
Name: Greg Butterfield  
Title: Chief Executive Officer

**SCHEDULE A**

Simply Brighter  
Simple, affordable solar solutions  
Solar Academy  
Solar Core  
Powers of Magnitude  
Solar Price Protection Plan  
Save Money, Gain Energy Independence, Go Green  
Pay less for power  
Lights on



**TERMINATION AGREEMENT**  
**(Turnkey Full-Service Sublease Agreement)**

This TERMINATION AGREEMENT (this “*Agreement*”) is made and entered into as of September 30, 2014, by and between VIVINT SOLAR HOLDINGS, INC., a Delaware corporation f/k/a Vivint Solar, Inc. (together with its successors and permitted assigns, the “*Company*”), and VIVINT, INC., a Utah corporation (together with its successors and permitted assigns “*Vivint*”). Each of the Company and Vivint may also be referred to herein individually as a “*Party*”, and collectively as the “*Parties*”.

**RECITALS**

WHEREAS, the Company and Vivint entered into that certain Turnkey Full-Service Sublease Agreement, dated as of June 20, 2013 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “*Sublease Agreement*”), pursuant to which Vivint subleased certain Premises (as defined in the Sublease Agreement) and provided certain services to the Company;

WHEREAS, Section 12(d) of the Sublease Agreement provides that the Sublease Agreement may be modified only upon written agreement of Vivint and the Company; and

WHEREAS, because the Company no longer subleases the Premises from or uses the Services of Vivint (as each term is defined in the Sublease Agreement), the Company and Vivint desire to hereby terminate and cancel the Sublease Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agrees as follows:

1. Definition. Any capitalized term used by not defined herein shall have the meaning ascribed to such term in the Sublease Agreement.
2. Termination. Effective as of September 30, 2014 (the “*Effective Date*”), the Company and Vivint hereby agree that the Sublease Agreement shall terminate and be of no further force or effect.
3. Acknowledgement and Release. Notwithstanding anything to the contrary in the Sublease Agreement before the Effective Date, Vivint hereby acknowledges and agrees that there has been and there is no outstanding and unpaid amount due by the Company or any of its affiliates to Vivint in respect of the Base Rent or the Services Fee or any other payment obligation under the Sublease Agreement.

4. Miscellaneous .

(a) *Entire Agreement* . This Agreement constitutes the entire agreement among the Parties and supersedes all prior oral and written negotiations, communications, discussions and correspondence pertaining to the subject matter hereof. No representation, statement, condition or warranty not contained in this Agreement will be binding on the Parties or have any force or effect whatsoever.

(b) *Amendments and Waivers* . This Agreement may only be amended or modified by an instrument in writing signed by all of the Parties.

(c) *Binding Effect* . This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and permitted assigns.

(d) *Governing Law* . The interpretation and enforceability of this Agreement and the rights and liabilities of the Parties hereto as such shall be governed by the laws of the State of Utah without giving effect to the principles of conflict of laws thereof.

(e) *WAIVER OF JURY TRIAL* . EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY HEREBY AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

(f) *Counterparts* . This Agreement may be executed by the Parties on any number of separate counterparts, by facsimile or email, and all of said counterparts taken together shall be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or portable document format (“pdf”) signature page shall constitute an original for purposes hereof.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Termination Agreement as of the date first written above.

**THE COMPANY:**

VIVINT SOLAR HOLDINGS, INC.,  
a Delaware corporation  
By: /s/ Greg Butterfield

Name: Greg Butterfield  
Title: Chief Executive Officer

**[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]**

[SIGNATURE PAGE]

TERMINATION AGREEMENT

( *Sublease Agreement* )

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**VIVINT:**

VIVINT, INC.,  
a Utah corporation

By: /s/ Alex Dunn  
Name: Alex Dunn  
Title: President

[SIGNATURE PAGE]

TERMINATION AGREEMENT  
( *Sublease Agreement* )

## BILL OF SALE AND ASSIGNMENT

This BILL OF SALE AND ASSIGNMENT (this “*Bill of Sale*”), is made and entered into as of September 30, 2014 (the “*Effective Date*”), by and between VIVINT SOLAR, INC., a Delaware corporation (f/k/a Solar Holdings, Inc.) (together with its successors and permitted assigns, “*Vivint Solar*”), and VIVINT, INC., a Utah corporation (together with its successors and permitted assigns “*Vivint*”). Each of Vivint Solar and Vivint may also be referred to herein individually as a “*Party*”, and collectively as the “*Parties*”.

### RECITALS

WHEREAS, Vivint Solar and Vivint are affiliate business entities, under the common control and ownership of 313 Acquisition, LLC, a Delaware limited liability company.

WHEREAS, by this Bill of Sale Vivint is vesting in Vivint Solar all of the properties, assets, and rights of Vivint described below.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions

. Any capitalized term used but not defined in this Bill of Sale will have the meaning set forth for that term in the Master Framework Agreement of even date herewith between Vivint and Vivint Solar, Inc. (the “*Master Framework Agreement*”). Capitalized terms used in this Bill of Sale and not otherwise defined in this Bill of Sale or in the Master Framework Agreement will have the following meanings:

(a) “*Transferred Assets*” means the assets set out in Exhibit A.

2. Transfer. Pursuant to the Master Framework Agreement, Vivint does hereby grant, bargain, sell, convey, transfer, assign, set over, release, deliver and confirm to Vivint Solar, its successors and assigns, all of their right, title and interest in and to the Transferred Assets to have and to hold the same, with the appurtenances thereof, unto Vivint Solar, its successors and assigns forever, to and for their own use and benefit.

3. No Third Party Beneficiaries. Nothing in this Bill of Sale, express or implied, is intended or shall be construed to confer upon, or give to, any person, firm or corporation other than Vivint Solar and its successors and assigns, any remedy or claim under or by reason of this Bill of Sale on any terms, covenants or condition hereof, and all the terms, covenants and conditions, promises and agreements in this Agreement contained shall be for the sole and exclusive benefit of Vivint Solar and its successors and assigns.

4. Master Framework Agreement. This Bill of Sale is governed by the Master Framework Agreement, including the provisions of Sections 4 (Confidentiality) and 6 (Miscellaneous) of the Master Framework Agreement.

BILL OF SALE AND ASSIGNMENT

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGES TO BILL OF SALE AND ASSIGNMENT]

IN WITNESS WHEREOF, the Parties have executed this Bill of Sale and Assignment as of the date first written above.

**VIVINT SOLAR:**

VIVINT SOLAR, INC.,  
a Delaware corporation

By: /s/ Greg Butterfield  
Name: Greg Butterfield  
Title: Chief Executive Officer

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

**VIVINT:**

VIVINT, INC.,  
a Utah corporation

By: /s/ Alex Dunn  
Name: Alex Dunn  
Title: President

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BILL OF SALE AND ASSIGNMENT

EXHIBIT A

**TRANSFERRED ASSETS**

- All computers, laptops and the like in the possession of or primarily used by employees or contractors of Vivint Solar;
- All tablets, cell phones, and other mobile communication devices in the possession of or primarily used by employees or contractors of Vivint Solar;
- All monitors, televisions, or other display devices in the possession of or primarily used by employees or contractors of Vivint Solar;
- All printers, faxes, multifunction devices and other office equipment in the possession of or primarily used by employees or contractors of Vivint Solar; and
- All networking or telephony equipment in the possession of or primarily used by employees or contractors of Vivint Solar.

BILL OF SALE AND ASSIGNMENT

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
VIVINT SOLAR LICENSING, LLC**

This Limited Liability Company Agreement (together with the schedules attached hereto, this “Agreement”) of Vivint Solar Licensing, LLC (the “Company”), is entered into by Vivint, Inc., as the 90 percent equity member (the “Primary Member”) and Vivint Solar, Inc. as the 10 percent equity member (the “Special Member” and together with the Primary Member, the “Members”). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

The Members, by execution of this Agreement, hereby form the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the “Act”), and this Agreement, and the Member and the Special Member hereby agree as follows:

Section 1. Name.

The name of the limited liability company formed hereby is Vivint Solar Licensing, LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at c/o Vivint, Inc., 4931 North 300 West, Provo, Utah 84604, or such other location as may hereafter be determined by the Members.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801, County of New Castle.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801, County of New Castle.

Section 5. Members.

(a) The mailing address of each Member is set forth on Schedule B attached hereto. Each Member is hereby admitted to the Company upon its execution of a counterpart signature page to this Agreement.

(b) Subject to Section 9(f), the Members may act by written consent.

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(c) The Special Member shall be the member of the Company that has a 10 percent interest in the profits, losses and capital of the Company and has a right to receive 10 percent of any distributions of Company assets. Pursuant to Section 18-301 of the Act, the Special Member shall not be required to make any further capital contributions to the Company. The Special Member, in its capacity as Special Member, shall have no power or right to carry out, manage or control the business or affairs of the Company, to make any decision regarding the business of the Company, to bind the Company, or to grant any rights or licenses with respect to the Marks (except as otherwise provided in the License Agreement) or other assets of the Company or terminate any license granted by the Company, and shall not hold itself out as same.

(d) The parties hereto agree that the Company is not intended to be treated for federal, state or local tax purposes as an entity separate from the Member prior to the admission to the Company of an additional Member other than the Special Member.

Section 6. Certificates.

Bre Madsen is hereby designated as an “authorized person” within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an “authorized person” ceased, and the Primary Member thereupon became the designated “authorized person” and shall continue as the designated “authorized person” within the meaning of the Act. The Primary Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business. The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purposes. (a) The purpose to be conducted or promoted by the Company is to engage in the following activities:

- (i) to acquire, own, and hold (and, solely to the extent provided in the License Agreement, protect, defend and maintain) the Marks in the field of the Vivint Solar Business;
- (ii) to perform the Company’s obligations under that certain Trademark License Agreement between the Company and the Special Member dated as of the date hereof (the “License Agreement”), pursuant to which the Company shall license certain trademarks and intellectual property to the Special Member ; and
- (iii) subject to Section 9(f), to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware to accomplish the above purposes.

(b) Subject to Section 7(c) and Section 9(f), the Company, by or through the Primary Member or any officer on behalf of the Company, may enter into and/or perform the License Agreement without any further act, vote or approval of any other Person.

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(c) Notwithstanding anything contained in this Agreement to the contrary, the Company shall not grant any liens on or security interests in any of the Marks. Any purported transaction in violation of the foregoing shall be deemed null and void *ab initio* and of no force or effect.

Section 8. Powers.

Subject to Section 9(f), the Company, the Primary Member and any officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) Generally. The Company shall be governed by the Primary Member (who shall have exclusive authority and control over the day-to-day operations and entire business of the Company, and who shall make all decisions required to be taken under this Agreement, except for those limited actions specified in Section 9(f) below) and the Special Member (whose consent shall be required for the actions specified in Section 9(f) below).

(b) Special Member. The initial Special Member shall be Vivint Solar, Inc. Vivint Solar, Inc. may in its sole discretion designate an Affiliate (as defined in the License Agreement) as Special Member in lieu of itself.

(c) Powers of the Primary Member. Without any notice to, or the consent of, the Special Member, the Primary Member shall have the full and exclusive right and all powers and rights necessary or desirable to carry out, manage and control the business and affairs of the Company and to make all decisions regarding the business of the Company, except for those limited actions specified in Section 9(f) below, which shall require the consent of the Special Member, including:

- (i) to take reasonable actions to protect and preserve the assets of the Company;
  - (ii) to exercise day-to-day control of the operations of the Company or to delegate such responsibilities to Officers in accordance with the terms of this Agreement;
  - (iii) to cause the License Agreement to be executed and delivered on behalf of the Company, and to cause the Company to perform its obligations thereunder;
  - (iv) to distribute to the Primary Member and Special Member any amounts received in connection with licensing the Marks; and
  - (v) to grant or refuse any consent or approval or make any determination referenced under the License Agreement.
-

(d) Right to Rely on Primary Member. Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Primary Member (without the signature or consent of the Special Member) as to:

- (i) the identity of any Member;
- (ii) the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Primary Member hereunder or which are in any other manner germane to the affairs of the Company;
- (iii) the Persons who are authorized to execute and deliver any instrument or document of the Company; or
- (iv) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member, except for those actions specified in Section 9(f) below which shall require the certificate to be also signed by the Special Member.

(e) Expense Reimbursements. Neither the Primary Member nor the Special Member shall be entitled to reimbursement for any expenses. However, the Primary Member agrees, by its signature on the signature page of this Agreement, that the Primary Member or its designee shall pay for all expenses associated with or related to (i) the formation of the Company, (ii) the permitted activities of the Primary Member, and (iii) the maintenance in good standing of the Company, including without limitation all attorneys' fees, accountants' fees, costs, government filing fees, preparation of tax returns, if necessary, and similar expenses.

(f) Limitations on the Company's Activities. Notwithstanding anything herein to the contrary, until the end of the Term, any and all actions by or on behalf of the Company, the Primary Member, any Officer or any other Person are subject to the limitations set forth in this Section 9(f). Any purported action by any Person in violation of this Section 9(f) shall be deemed null and void ab initio and of no force or effect.

- (i) This Section 9(f) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity.
  - (ii) The Primary Member shall not amend, modify, alter, supplement, change or repeal this Agreement without the prior written consent of the Special Member, which consent shall not be unreasonably withheld, conditioned or delayed.
  - (iii) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, the Primary Member, any Officer or any other Person, without the prior written consent of the Members in their sole discretion, (x) the Company may not take any Material Action and (y) neither the Primary Member nor any Officer nor any other Person shall be authorized or empowered, nor shall they permit the Company to take any Material Action.
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- (iv) The Primary Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. The Primary Member also shall cause the Company to:
- (A) maintain its own separate books and records and bank accounts and maintain same in a manner so that it will not be difficult or costly to segregate, ascertain or otherwise identify the assets and liabilities of the Company;
  - (B) at all times hold itself out to the public and all other Persons as a legal entity separate and distinct from the Members and any other Person;
  - (C) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division of another taxpayer for tax purposes, and pay any taxes so required to be paid under applicable law, but only to the extent that any such taxes are not being contested in good faith;
  - (D) not commingle its assets with assets of any other Person and hold all its assets in its own name;
  - (E) conduct its business in its own name and strictly comply with all organizational formalities to maintain its separate existence;
  - (F) remain solvent and pay its own liabilities, losses or expenses only out of its own funds as the sums shall become due;
  - (G) maintain an arm's length relationship with its Affiliates and the Primary Member;
  - (H) pay the salaries of its own employees, if any;
  - (I) not hold out itself out as responsible for or have its credit or assets available to satisfy the debts or obligations of others;
  - (J) allocate fairly and reasonably any overhead for shared office space;
  - (K) use separate stationery, business cards, purchase orders, invoices and checks bearing its own name to the extent it will use such items;
  - (L) not pledge its assets or secure its liabilities for the benefit of any other Person or guarantee or become obligated for the debts of any other Person;
  - (M) correct any known misunderstanding regarding its separate identity;
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- (N) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities;
  - (O) not acquire any securities of any Member;
  - (P) not incur, create or assume any indebtedness;
  - (Q) not make grant liens on, or security interests in, any assets of the Company;
  - (R) not make or permit to remain outstanding any loan or advance to, or own or acquire any stock, indebtedness or securities of, any Person;
  - (S) not form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other);
  - (T) cause the Officers, agents and other representatives of the Company to act at all times with respect to the Company consistently and in furtherance of the foregoing and in the best interests of the Company;
  
  - (U) subject to clause (R) below, will maintain separate annual financial statements prepared in accordance with generally accepted accounting principles, consistently applied, showing its assets and liabilities separate and distinct from those of any other person or entity;
  
  - (V) in the event the financial statements of Company are consolidated with the financial statements of any other entity, then in addition to maintaining separate financial statements as required above, cause to be included in such consolidated financial statements a note, in effect, stating that "Company is a separate entity that has separate assets and liabilities as shown on Company separate financial statements";
  
  - (W) pay or bear the cost of the preparation of its financial statements;
  
  - (X) maintain a sufficient number of employees or outside consultants in light of its contemplated business operations and pay their salaries out of its own funds;
  
  - (Y) to the extent that Company and any other Person share the same officers and other employees, allocate fairly, appropriately and nonarbitrarily any salaries and expenses to the extent actually incurred by such parties related to providing benefits to such officers and other employees between or among such entities, with the result that each such entity will bear its fair share of the salary and benefit
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costs associated with all such common or shared officers or other employees;

- (Z) to the extent that Company and any Person jointly contract or do business with vendors or service providers or share overhead expenses, allocate fairly, appropriately and nonarbitrarily any costs and expenses incurred in so doing between or among such entities, with the result that each such entity bears its fair share of all such costs and expenses;
  - (AA) to the extent Company contracts or does business with vendors or service providers where the goods or services are wholly or partially for the benefit of another Person, allocate fairly, appropriately and nonarbitrarily any costs incurred in so doing to the entity for whose benefit such goods or services are provided, with the result that each such entity bears its fair share of all such costs;
  - (BB) conduct its own business solely in its own name, through its duly authorized officers or agents;
  - (CC) hold all of its assets in its own name;
  - (DD) not form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other);
  - (EE) not identify itself as a division or department of any other entity;
  - (FF) cause representatives, employees and agents of Company to hold themselves out to third parties as being representatives, employees or agents, as the case may be, of Company;
  - (GG) at all times have a Special Member;
  - (HH) take all steps necessary to maintain, prosecute and renew all registrations and applications for the Marks in the field of the Vivint Solar Business, including paying all costs and expenses associated with all applications and registrations for such Marks; and
  - (II) not sell products or offer services in commerce or advertise, market or promote that it is doing same, whether under the Marks or otherwise.
- (v) Without the prior written consent of the Special Member in its sole discretion, the Primary Member shall not cause or permit the Company to, in each case, solely with respect to the Marks:
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- (A) instigate any investigation or send any third party a “cease-and-desist” letter, notice of infringement or the like, or institute or settle a dispute, proceeding or litigation against any third party other than as specifically provided in the License Agreement;
  - (B) file any trademark, copyright or domain name registration applications, or take any action with respect to any existing trademark, copyright or domain name registration applications other than as specifically provided in the License Agreement; or
  - (C) file any lawsuit or proceeding against a third party other than as specifically provided in the License Agreement.
- (vi) Without the prior written consent of the Special Member in its sole discretion, the Primary Member shall not cause or permit the Company to:
- (A) authorize any Officer to take any action which would otherwise require a unanimous vote or consent of the Members pursuant to this Agreement;
  - (B) amend the Certificate of Formation;
  - (C) sell, transfer, license or otherwise dispose of the Marks, except as permitted in the License Agreement;
  - (D) guarantee or assume any obligation of any Person (excluding the endorsement of checks in the ordinary course), including any Affiliate;
  - (E) engage, directly or indirectly, in any business other than the actions required or permitted to be performed under Section 7 or this Section 9(f); or
  - (F) take any other action expressly set forth in this Agreement as requiring the approval or consent of all of the Members.
- (vi) Failure of the Company or the Primary Member, on behalf of the Company, to comply with any of the foregoing covenants or any other covenant contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member.

Section 10. Intentionally Omitted

Section 11. Officers.

The Officers of the Company shall be designated by the Primary Member from time to time and, subject to Section 9(f), shall perform such duties and have such offices as may be

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designated by the Primary Member. Any number of offices may be held by the same person. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by the Primary Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, subject to Section 9(f), the actions of the Officers taken in accordance with such powers shall bind the Company.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Primary Member nor the Special Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Primary Member or Special Member of the Company.

Section 13. Capital Contributions.

The Primary Member has contributed to the Company the Marks as a capital contribution pursuant to the License Agreement. In accordance with Section 5(c), the Special Member shall not be required to make any further capital contributions to the Company.

Section 14. Additional Contributions.

The Primary Member may, but is not required to make any additional capital contribution. To the extent that the Primary Member makes an additional capital contribution to the Company, the Primary Member shall revise Schedule B of this Agreement. The provisions of this Agreement, including this Section 14, are intended to benefit the Primary Member and the Special Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Primary Member and the Special Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses, if any, shall be allocated 90 percent to the Primary Member and 10 percent to the Special Member.

Section 16. Distributions.

Cash Distributions shall be made to the Primary Member and Special Member at the times and in the aggregate amounts determined by the Primary Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Primary Member or the Special Member on account of its interest in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law.

Section 17. Books and Records.

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The Primary Member shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Primary Member. The Special Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company, and the Primary Member on behalf of the Company, shall not have the right to keep confidential from the Special Member any information that the Primary Member would otherwise be permitted to keep confidential from the Special Member pursuant to Section 18-305 (c) of the Act. The Company's books of account shall be kept using the method of accounting determined by the Primary Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Primary Member.

Section 18. Reports.

(a) Within 15 days after the end of each fiscal quarter, the Primary Member shall cause to be prepared an unaudited report setting forth as of the end of such fiscal quarter:

- (i) unless such quarter is the last fiscal quarter of the fiscal year, a balance sheet of the Company; and
- (ii) unless such quarter is the last fiscal quarter of the fiscal year, an income statement of the Company for such fiscal quarter.

(b) The Primary Member shall cause to be prepared within 20 days after the end of each fiscal year, an audited or unaudited report setting forth as of the end of such fiscal year:

- (i) a balance sheet of the Company;
- (ii) an income statement of the Company for such fiscal year;
- (iii) a statement of the Member's capital account; and
- (iv) any other information reasonably requested by the Members as being necessary for the Members to complete such Members' federal and state income tax or information returns.

Section 19. Other Business.

The Primary Member, the Special Member and any Affiliate of the Primary Member or the Special Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 20. Intentionally Omitted.

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Section 21. Assignments; Transfers.

(a) Either Member may assign its interest in this Agreement only as permitted by, and in connection with a permitted assignment in the License Agreement, to the assignee of such agreement. Any purported assignment in violation of this Section 21 shall be null and void *ab initio* and of no force and effect.

(b) A Member who makes an assignment of all of its interest in this Agreement in compliance with Section 21(a) will, upon the effective date of such assignment, no longer be a Member hereunder, and will no longer have any of the rights of a Member (including voting rights or rights to any information or accounting of the affairs of the Company) under the Act or this Agreement.

(c) A Person who acquires all of a Member's interest in this Agreement in compliance with the provisions of Section 21(a) shall automatically become a Member upon such time as such Person executes and delivers to the Company counterpart signature pages to this Agreement and, if applicable, evidence of assumption of the License Agreement between the Company and the former Member.

(d) Unless otherwise provided in this Agreement or in the documentation affecting any such assignment in compliance with Section 21(a), such assignment will be effective as of the close of business on the day on which all documentation required by this Section 21 has been received and accepted by the Company.

Section 22. Resignation.

So long as the License Agreement is in effect, the Primary Member may not resign. If the Primary Member is permitted to resign pursuant to this Section 22, an additional member of the Company shall be admitted to the Company, subject to the consent of the Special Member, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 23. Admission of Additional Members.

One or more additional members of the Company may be admitted to the Company with the written consent of the Primary Member; provided, however, notwithstanding the foregoing, no additional Member may be admitted to the Company without the consent of the Special Member other than additional Members admitted to the Company pursuant to Section 21.

Section 24. Dissolution.

(a) Subject to Section 9(f), the Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the

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Company unless the business of the Company is continued in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18–802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company, to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (x) to continue the Company and (y) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Primary Member or the Special Member shall not cause the Primary Member or Special Member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Primary Member and the Special Member waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Primary Member or the Special Member, or the occurrence of an event that causes the Member or the Special Member to cease to be a member of the Company.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18 –804 of the Act. Without limiting the generality of the foregoing, except as otherwise provided in the License Agreement, upon the earlier to occur of (i) dissolution of the Company or (ii) termination of the License Agreement, the Marks and all rights and benefits attendant thereto shall be distributed to the Primary Member.

(e) The Company shall have perpetual existence except that Company shall be dissolved when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in this Agreement, (ii) the Certificate of Formation shall have been canceled in the manner required by the Act or (iii) at the Primary Member’s discretion, upon termination of the License Agreement.

(f) Upon dissolution or termination of this Agreement, all rights and obligations of the Company hereunder and each of the Primary Member and the Special Member with respect thereto shall terminate.

Section 25. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each of the Primary Member and the Special Member hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the

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Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Primary Member shall not have any interest in any specific assets of the Company, and the Primary Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of each of the Members in the Company is personal property.

Section 26. Benefits of Agreement; No Third-Party Rights .

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Primary Member or the Special Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than the Special Member) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (except as provided in Section 29).

Section 27. Severability of Provisions .

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, that provision will be enforced to the fullest extent permitted by applicable law, and the remainder of this Agreement will remain in full force and effect. If the time period or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum time period or scope that that court deems enforceable, then that court will reduce the time period or scope to the maximum time period or scope permitted by law. If the geographic region or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum geographic region or scope that that court deems enforceable, then that court will reduce the geographic region or scope to the maximum time period or scope permitted by law.

Section 28. Entire Agreement .

This Agreement, together with the referenced definitions and provisions of the License Agreement and the exhibits and schedules incorporated herein or therein, constitute the entire agreement of the parties with respect to the subject matter hereof.

Section 29. Binding Agreement .

Notwithstanding any other provision of this Agreement, the Primary Member agrees that this Agreement, including, without limitation, Sections 7, 8, 9, 20, 21, 22, 23, 24, 26, 28, 29, 31, 32, 33, 34, 35 and 36, constitutes a legal, valid and binding agreement of the Primary Member, and is enforceable against the Primary Member by the Special Member, in accordance with its terms. In addition, the Special Member shall be the intended beneficiary of this Agreement.

Section 30. Governing Law .

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

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Section 31. Jurisdiction.

Each of the Primary Member and the Special Member hereby irrevocably submits to the personal jurisdiction of any state or federal court sitting in the State of Utah, County of Salt Lake, in any suit, action or proceeding arising out of or relating to this Agreement. Each Member hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which that Member may raise now, or later have, to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Each Member agrees that, to the fullest extent permitted by applicable law, a final judgment in any such suit, action, or proceeding brought in such a court will be conclusive and binding upon such Member, and may be enforced in any court of the jurisdiction in which such Member is or may be subject by a suit upon such judgment. Each Member further agrees that personal jurisdiction over it may be effected by service of process by certified mail addressed as provided in Section 38, and when so made will be as if served upon it personally within the State of Utah.

Section 32. WAIVER OF JURY TRIAL.

EACH MEMBER HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY EITHER MEMBER AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH MEMBER HEREBY AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE PREVIOUS SENTENCE, THE MEMBERS FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM, OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF ANY PORTION OF THIS AGREEMENT. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENT, RENEWAL, SUPPLEMENT, OR MODIFICATION TO THIS AGREEMENT.

Section 33. Specific Performance.

The Members agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms thereof, and that the Members will be entitled to seek specific performance of the terms of this Agreement, in addition to any other remedy to which they are entitled at law or in equity.

Section 34. Attorneys' Fees

In any Dispute, the prevailing Member will be entitled to recover a reasonable allowance for attorneys' fees and litigation expenses. For purposes of this Section 34, "prevailing Member" will mean: (a) a prevailing Member in any litigation as determined by a court of competent jurisdiction; and (b) a Member who agrees to dismiss a Dispute with prejudice upon the other's payment of the sums allegedly due or performance of covenants allegedly breached.

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## (a) Obligations of the Receiving Party.

- (i) The Receiving Party and its Representatives will: (i) keep and safeguard as confidential all of the Disclosing Party's Confidential Information, using at least those measures that the Receiving Party takes to protect its own information of a similar nature, including, as applicable, secure access to information technology systems where Confidential Information is stored, which measures will, at minimum, be reasonable; (ii) not disclose any Confidential Information in any manner whatsoever, except in accordance with Sections 35(a)(ii) or 35(a)(iv), or as required by applicable Law pursuant to Section 35(b); and (iii) use the Disclosing Party's Confidential Information only to perform the Receiving Party's obligations or exercise the Receiving Party's rights under a Transaction Agreement or otherwise for the benefit of the Disclosing Party.
- (ii) A Receiving Party may disclose the Disclosing Party's Confidential Information to the Receiving Party's Representatives who: (a) have a need to know the Confidential Information for the performance of the Receiving Party's obligations or exercise of its rights under this Agreement or the License Agreement; (b) are informed by Receiving Party of the confidential nature of the Confidential Information; and (c) agree in writing to strictly abide by an obligation of confidentiality no less strict than the terms of this Section 35 or have another legal duty of confidentiality to the Receiving Party. Each Member will remain liable for any use or disclosure of the other Member's Confidential Information by any Representative in contravention of this Section 35.
- (iii) Neither Member will make any copy of the other Member's Confidential Information unless approved in writing by the other Member. Neither Member may remove any proprietary, copyright, confidential, trade secret or other legend from any of the other Member's Confidential Information or any copies.
- (iv) Except for disclosures made in accordance with Section 35(a)(ii), any disclosure by the Receiving Party or any of its Representatives of the Disclosing Party's Confidential Information is subject to the prior written consent of one of the following individuals at the Disclosing Party: (i) for the Special Member, the Chief Executive Officer or the Chief Legal Officer; and (ii) for the Primary Member, the President or the General Counsel.

(b) If either Member or an Affiliate of either Member is requested to or required by Law to disclose the existence or terms of this Agreement, the License Agreement or the other Member's Confidential Information in contravention of the provisions of this Section 35, such Member must promptly provide the other Member with drafts of any filings or other documents

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in which such Member or its Affiliate is required to disclose any portion of this Agreement, the License Agreement, or any other Confidential Information of the other Member subject to the terms of this Section 35, but in no event less than three business days prior to filing or disclosure, and such Member will consider in good faith making any changes to such materials as requested by the other Member to the extent such changes are, in the good faith judgment of such Member, permitted by Law.

(c) Neither Member may make any public announcement, including any press release, website disclosure, interview intended for publication, advertisement, professional or trade publication, mass marketing material, or other announcement to the general public, in each case regarding the other Member or this Agreement or the License Agreement, unless the other member agrees in writing in accordance with Section 35(a)(ii) or Section 35(a)(iv), as applicable. Each Member will avoid deceptive, misleading or unethical practices that are or might be detrimental to the other Member and not disparage the other Member or its products or services.

(d) EXCEPT AS EXPRESSLY SET FORTH IN THE LICENSE AGREEMENT, ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." NEITHER MEMBER MAKES ANY WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF ITS CONFIDENTIAL INFORMATION.

(e) All documents and other tangible objects containing or representing Confidential Information and all copies of them will be and remain the property of the Disclosing Party. Upon the Disclosing Party's request, the Receiving Party will promptly deliver to the Disclosing Party all Confidential Information, without retaining any copies unless otherwise expressly authorized by the License Agreement.

(f) Nothing in this Section 35 is intended to grant any rights to either Member under any patent, copyright, or other intellectual property right of the other Member, nor will this Section 34 grant any Party any rights in or to the Confidential Information of the other Member, except as expressly set forth in this Section 35.

(g) The obligations of each Receiving Party under this Section 35 will survive until all Confidential Information of the other Member becomes publicly known and made generally available through no action or inaction of the Receiving Party.

(h) The Receiving Party will indemnify and hold harmless the Disclosing Party from any damage, loss, cost, or liability (including reasonable attorney fees) arising or resulting from any unauthorized use or disclosure of the Disclosing Party's Confidential Information by Receiving Party or any of its employees, agents, or Subsidiaries.

Section 36. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

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Section 37. Notices.

All notices, requests, demands, and other communications required or permitted to be given under this Agreement by any party shall be in writing delivered to the applicable parties at the following address:

if to Special Member:	with a copy to:
Vivint Solar, Inc. 4931 North 300 West Provo, Utah 84604 Attn: Greg Butterfield, CEO E-mail: greg.butterfield@vivintsolar.com	Vivint Solar, Inc. 4931 North 300 West Provo, Utah 84604 Attn: Vivint Solar Legal Department E-mail: solarlegal@vivintsolar.com

if to Primary Member:	with a copy to:
Vivint, Inc. 4931 North 300 West Provo, Utah 84604 Attn: Alex Dunn, President E-Mail: adunn@vivint.com	Vivint, Inc. 4931 North 300 West Provo, Utah 84604 Attn: Nathan Wilcox, General Counsel E-Mail: nwilcox@vivint.com

or to such other address as any Member may designate from time to time by written notice to all other parties. Each such notice, request, demand, or other communication shall be deemed given and effective, as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by first-class U.S. Mail, postage prepaid, upon the earlier to occur of receipt or three (3) days after deposit in the U.S. Mail; (c) if sent by a recognized prepaid overnight courier service, one (1) day after the date it is given to such service; (d) if sent by facsimile, upon receipt of confirmation of successful transmission by the facsimile machine; and (e) if sent by email, upon acknowledgement of receipt by the recipient.

Section 38. Effectiveness.

Pursuant to Section 18-201 (d) of the Act, this Agreement shall be effective as of the time of the filing of the Certificate of Formation with the Office of the Delaware Secretary of State on June 9, 2014.

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**SPECIAL MEMBER:**

VIVINT SOLAR, INC.,  
a Delaware corporation

By: /s/ Greg Butterfield  
Name: Greg Butterfield  
Title: Chief Executive Officer

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 30th day of September 2014.

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**DEFINITIONS**A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to a specified Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such specified Person; provided that, for the purposes of this Agreement, the Company and the Primary Member shall not be considered Affiliates of each other, the Company and the Special Member shall not be considered Affiliates of each other and the Primary Member and the Special Member shall not be considered Affiliates of each other .

“Agreement” means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

“Bankruptcy” means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person’s consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of “Bankruptcy” is intended to replace and shall supersede and replace the definition of “Bankruptcy” set forth in Sections 18-101(1) and 18-304 of the Act.

“Certificate of Formation” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on June 9, 2014, as amended or amended and restated from time to time.

“Company” has the meaning set forth in the preamble to this Agreement.

“Confidential Information” means all non-public information provided or made available by or on behalf of one Member to the other Member or otherwise acquired, directly or indirectly, by the Receiving Party as a result of the relationship between the Members, whether before or

after the Effective Date, in writing, orally, or by inspection of tangible objects, including any analyses, compilations, forecasts, studies, or other documents prepared by the Receiving Party or its Representatives that contain or reflect such non-public information. Confidential Information includes the terms and existence of this Agreement, the License Agreement, all other documents or agreements entered into between the Members relating to the Marks, customer data, financial information, and employee data. Confidential Information may also include information disclosed to the Disclosing Party by third parties. Confidential Information will not, however, include any information that the Receiving Party can demonstrate by competent evidence: (i) was publicly known or made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known or made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party or any of its Affiliates or Representatives; (iii) is lawfully obtained by the Receiving Party or an Affiliate or Representative from a third party without a breach by the third party of its legal, contractual, or fiduciary obligations of confidentiality; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by competent evidence in the Receiving Party's possession.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

“Disclosing Party” means the Party who provides (by any means) any Confidential Information to the Receiving Party.

“Dispute” means any dispute, controversy or claim between or among any of the Company or a Member (including for this purpose any transferee of a Membership Interest) in connection with or related to this Agreement or the License Agreement, including any collateral claim, or action made or brought against the Primary Member, the Officers or any Member in respect of a decision, action or omission to act. The foregoing notwithstanding, “Dispute” shall not include any claim alleging trademark infringement.

“License Agreement” has the meaning set forth in Section 7(a)(ii) of this Agreement, and as amended from time to time in accordance with its terms.

“Marks” means the Marks, as defined in the License Agreement.

“Material Action” means to (i) consolidate or merge the Company with or into any Person (whether or not such merger or consolidation is into a wholly-owned subsidiary corporation or a purely internal merger solely to effect a change in domicile), (ii) sell, convey or otherwise dispose of in any manner, including by license (or agrees in writing to do the same), all or a material portion of the property, rights or assets of the Company, except as permitted in the License Agreement, (iii) enter into any agreement or transaction with any Affiliate, (iv) institute proceedings to have the Company be adjudicated bankrupt or insolvent, (v) consent to the institution of bankruptcy or insolvency proceedings against the Company or file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable

federal or state law relating to bankruptcy, (vi) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, (vii) consent to substantive consolidation of the Company, (viii) make any assignment for the benefit of creditors of the Company, (ix) admit in writing the Company's inability to pay its debts generally as they become due, (x) take any action that might reasonably be expected to cause the Company to become insolvent, (xi) to the fullest extent permitted by law, dissolve or liquidate the Company, or (xii) take action in furtherance of any of the foregoing.

“Members” has the meaning set forth in the preamble to this Agreement.

“Membership Interest” means all of the rights, powers, obligations and duties permitted to a member of a limited liability company formed under the Act, including, but not limited to, the right to received distributions and all voting rights permitted to a member under the Act.

“Officer” means an officer of the Company described in Section 11.

“Officer's Certificate” means a certificate signed by any Officer of the Company who is authorized to act for the Company in matters relating to the Company.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Receiving Party” means the Party to whom any Confidential Information is provided (by any means) by the Disclosing Party.

“Representatives” means directors, officers, employees, consultants, representatives, attorneys, accountants, agents, equity holders, auditors, senior lenders, take-out lenders, and Affiliates.

“Term” has the meaning set forth in the License Agreement.

“Vivint Solar Business” means the business of selling renewable energy or energy storage products and services to any Person.

B. Rules of Construction

In this Agreement: (a) the terms “herein,” “herewith” and “hereof” are references to this Agreement, taken as a whole; (b) the term “includes” or “including” shall mean “including, without limitation”; (c) references to a “Section,” “subsection,” “clause,” shall mean a Section, subsection, clause of this Agreement, as the case may be, unless in any such case the context requires otherwise; (d) all references to a given agreement, instrument or other document, or to any Law, Standard or Code, shall be a reference to such agreement, instrument or other document, or to such Law, Standard or Code, as modified, amended, supplemented and/or restated from time to time; and (e) reference to a Person or Party includes its successors and permitted assigns; the singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa.

**SCHEDULE B**

**MEMBERS**

<u>Name</u>	<u>Mailing Address</u>	<u>Membership Interest</u>
Vivint, Inc.	4931 North 300 West Provo, Utah 84604	90%
Vivint Solar, Inc.	4931 North 300 West Provo, Utah 84604	10%

## TRADEMARK LICENSE AGREEMENT

This TRADEMARK LICENSE AGREEMENT (this “*Agreement*”), dated as of September 30, 2014 (the “*Effective Date*”), by and among VIVINT SOLAR LICENSING, LLC, a limited liability company organized under the laws of Delaware (“*Licensor*”) and VIVINT SOLAR, INC., a Delaware corporation (f/k/a V Solar Holdings, Inc.) (“*Licensee*”). Each of Licensor and Licensee may also be referred to herein individually as a “*Party*”, and collectively as the “*Parties*”.

### RECITALS

WHEREAS, Licensee and Vivint, Inc. (“*Vivint*”) are affiliate business entities, under the common control and ownership of 313 Acquisition, LLC, a Delaware limited liability company;

WHEREAS, Licensee and Vivint entered into that certain Limited Liability Company Agreement, dated on or about the date hereof, pursuant to which, *inter alia*, Licensee and Vivint are members and co-managers of the Licensor;

WHEREAS, Vivint is the owner of the trademark “Vivint Solar,” which was licensed by Vivint to Licensee beginning on June 1, 2011, pursuant to that certain Trademark / Service Mark License Agreement, dated of June 1, 2011, as amended and restated by that certain Amended and Restated Trademark / Service Mark License Agreement, dated as of June 10, 2013 (the “*Prior License*”);

WHEREAS, simultaneous with this Agreement, Vivint and Licensee are terminating the Prior License, and Vivint is assigning the “Vivint Solar” trademark to Licensor pursuant to that certain Trademark Assignment Agreement, dated on or about the date hereof,

WHEREAS, Licensor desires to license the “Vivint Solar” mark to Licensee, and the Parties desire to enter into this Agreement to replace the Prior License;

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby established, and in consideration of the terms and conditions set forth herein, Licensor and Licensee hereby agree as follows:

#### ARTICLE 1 - DEFINITIONS

(a) Definitions. Any capitalized term used but not defined in this Agreement will have the meaning set forth for that term in the Master Framework Agreement.

(i) “*Affiliate*” of a Party means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, that Party. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction

of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. For clarity, Licensor and Licensee shall not be considered Affiliates of each other, and Vivint, Inc. shall be considered an Affiliate of Licensor (but not of Licensee) for purposes of this Agreement.

(ii) “**Marks**” shall mean any Source Indicator comprising or including the term “Vivint Solar” (which must be the two words together, in that order, presented as a single composite mark, and the “Solar” portion cannot be materially smaller than, or separated from the “Vivint” portion in any manner that does not convey “Vivint Solar” as a single composite mark), including the Source Indicators set forth on Schedule A attached hereto. For clarity, “Vivint Solar Panels” is a Mark (subject to the approval process in Section 2(c)) but “Vivint The Solar Company” and “**VIVINT**<sub>solar</sub>” are not Marks.

(iii) “**Source Indicators**” shall mean trademarks, service marks, social, digital, or mobile media identifiers, corporate names (including d/b/a, f/k/a and similar designations), trade names, domain names, logos, slogans, designs, trade dress and other designations of source or origin, together with the goodwill symbolized by any of the foregoing.

(iv) “**Vivint Solar Business**” means the business of selling renewable energy or energy storage products and services to any Person.

(v) “**Vivint Solar Competitor**” shall mean a Person who is engaged in any aspect of the Vivint Solar Business.

(b) Terms Generally. Except as otherwise provided in this Agreement, each Party hereby agrees and acknowledges that the rules of interpretation from the Master Framework Agreement shall apply to this Agreement.

## ARTICLE 2 - LICENSE

(a) Grant of Rights. For the term of this Agreement, Licensor hereby grants to Licensee a worldwide, exclusive (even as to Vivint and Licensor), perpetual (except as provided in Section 7(b)), irrevocable, non-terminable (except as provided in Section 7(b)), fully paid up, royalty-free right and license to use the Marks, free and clear of any Liens, on and in connection with the Vivint Solar Business (collectively, the “**License**”).

(b) Sublicensees. Licensee may sublicense the License without the prior consent of Licensor solely (i) to Licensee’s Subsidiaries (except in a transaction that triggers termination under Section 7(b)(v)) and (ii) to suppliers, vendors, distributors, customers, partners, end-users, and other similarly situated Persons, in each case, to the extent necessary to operate Licensee and such Subsidiaries’ businesses and not for the independent or unrelated use of any such Persons, provided that (x) Licensee is liable hereunder for any action or inaction by any such sublicensee that would breach this Agreement if committed by Licensee, and (y) any such sublicense is non-assignable and non-sublicensable. Any purported sublicense in violation of this Section 2(b) shall be null and void ab initio and of no force and effect. Licensee shall not sublicense or authorize a sublicensee to take any action that would violate this Agreement if committed by Licensee.

(c) New Marks. Licensee shall not adopt or use (i) the Marks with any other Source Indicator in any manner that creates or suggests a composite or combination mark; (ii) any translations, transliterations, stylizations, fonts, logos or variations of the Marks; or (iii) the Marks in any new country or jurisdiction (collectively (i)-(iii), a “**Mark Variation**”), without the prior written consent of Licensor. Such consent shall not be unreasonably withheld, conditioned or delayed with respect to any Mark Variation, except for any Mark Variation that proposes any stylization, font, logo or variation of the Mark, with respect to which Licensor’s consent shall be in its sole discretion. Licensor approves all Mark Variations in use as of the Effective Date. All approved Mark Variations shall be deemed Marks under the Agreement, except that Licensor acquires no right, title or interest under this Agreement in any element of the Mark Variations as part of the Mark or standing alone, other than the “Vivint” element. Further, if Licensor adopts or uses any new translations, transliterations, stylizations, fonts, logos or variations of the Marks and notifies Licensee of same, Licensee shall (a) use commercially reasonable efforts to transition to same promptly after receipt of such notice, and (b) in any event adopt and use same within nine (9) months after receipt of any such notice, provided that (x) Licensor shall not unreasonably refuse an extension of time requested by Licensee for individual items for which the brand transition could not be reasonably completed during such time and (y) Licensee shall be free to exhaust any existing collateral that displays the prior versions of the Marks as of the notification date, is used internally and is not visible to third parties, until its replacement in the ordinary course of business.

(d) **Reservation of Rights**

All rights in the “Vivint” element of Marks not expressly granted to Licensee are hereby reserved to Vivint LLC. Except in connection with archival and legally permissible “fair use” references, Licensee shall not use any Source Indicator comprising or including the term “Vivint” other than a licensed Mark hereunder.

### **ARTICLE 3 - PARTIES’ OBLIGATIONS**

(a) Authorization. Licensor hereby gives, and for no additional consideration, at Licensee’s reasonable request and expense, agrees to attend to any additional formalities necessary to give, Licensee all necessary consents to allow Licensee to use and exploit the Marks, including in connection with any registration, licensing, and/or qualification with any federal, state, or local government agency. Assistance under this section may include execution, acknowledgment and recordation of specific agreements, oaths, declarations and other documents as Licensee may reasonably request.

(b) Approval. Licensee shall not be required to seek prior approval from Licensor for any advertising, promotional or marketing materials or other uses of the Marks. No more than once a year during the Term (unless prior samples provided by Licensee or other evidence suggests that Licensee may be in breach of the Agreement), at Licensor’s reasonable request and expense, Licensee shall send to Licensor representative samples of marketing materials, products and services in any media bearing the Marks.

### **ARTICLE 4 - OWNERSHIP OF TRADEMARKS**

(a) Ownership. Licensee acknowledges that Licensor is the owner of the Marks and all the goodwill associated with the Marks. Licensee acquires no right, title or interest in or to

the Marks under this Agreement, and any and all goodwill associated with the “Vivint” element of Marks by Licensee’s use shall inure exclusively to the benefit of Licensor. The foregoing does not limit Licensee’s ownership and registration rights in Section 6(a)(ii).

(b) Registration. Except as provided in this Section 4(b)(i) or in Section 6(a)(ii), Licensor shall have the sole right to file, prosecute until registration, register, maintain and renew all registrations, applications and reservations of all Source Indicators containing the Marks, which such actions shall be taken at Licensee’s request and expense. Licensor has the sole right to file for any new registrations, applications or reservations of all Source Indicators containing the Marks, but shall not unreasonably refuse, condition or delay to file if requested by Licensee to do so. If Licensor refuses any request by Licensee on such grounds, it shall promptly specify the reasons in sufficient detail to allow Licensee to attempt to cure. Once Licensor has filed for a new registration, application or reservation for the Marks, it shall cause Licensee to be kept apprised of all future required submissions and responses to prosecute, maintain and renew same. Subject to Licensor promptly keeping Licensee apprised of any response and submission deadlines, Licensee shall provide Licensor with reasonable advance notice of any responses or submissions it wishes for Licensor to take in this regard, and Licensor shall not unreasonably refuse, condition or delay to take all such actions within a reasonable time after any such notice or allow Licensee to do so in its stead. If (a) Licensee has provided reasonable advance notice in writing, assuming Licensor promptly keeps Licensee apprised of any such response and submission deadline, (b) Licensor unreasonably fails to make any required submission or response to a government agency or registry with respect to the prosecution, maintenance or renewal of a previously filed application for a Mark, and (c) a government agency or registry deadline is imminent, Licensor hereby provides Licensee with a power of attorney (and Licensor will execute any necessary power of attorney in favor of Licensee) solely to complete and file the submission or response referenced in Section 4(b)(i)(b), and such power of attorney shall not apply to any subsequent submissions or responses for such Mark, unless clauses (a)-(c) apply thereto.

(c) No Contest. During the Term and thereafter, Licensee shall not dispute or contest, directly or indirectly, Licensor’s ownership of the Marks at all times prior to the termination of this Agreement, including without limitation all registrations and pending registrations thereof and any other rights and common law rights therein. During the Term and thereafter, Licensee shall not dispute or contest, directly or indirectly, the validity or enforceability of the Marks at all times prior to the termination of the Agreement, nor directly or indirectly attempt to acquire the value of the goodwill associated with the “Vivint” element of the Marks. Neither Party nor its Affiliates shall intentionally damage the value of the goodwill associated with the Marks.

#### **ARTICLE 5 - QUALITY CONTROL**

(a) Licensee will use the Marks only for materials, services and products which are at least of comparable quality to (i) the products offered by Vivint at the applicable time, or (ii) the products offered by Licensee as of the Effective Date, which Licensor acknowledges are of a sufficient quality;

(b) Licensee will use the Marks in accordance with all applicable Laws;

-4- TRADEMARK LICENSE

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(c) Licensor will have the right, at all reasonable times and upon reasonable notice, and no more than once per year (unless prior samples provided by Licensee suggested that Licensee may be in breach of the Agreement), and at Licensor's sole expense, to monitor and inspect the materials and products being used and/or sold and the services being performed by Licensee and its sublicensees under the Marks at Licensee's (or the sublicensee's, as applicable) premises to determine that they are of acceptable quality; and

(d) Licensee will advise Licensor of any known material breach of quality control requirements of this Section 5 or brand guidelines attached as Exhibit A.

#### ARTICLE 6 - OBLIGATION OF LICENSOR AND LICENSEE

(a) Licensor. Licensor agrees that Licensee will be the registrant of all current and approved future domain names included in the Marks, including those domain names listed on Schedule 1. Licensee shall have the right to serve as the administrative, technical and/or other contact with the registry for any such domain name, and shall have operational and technical control over all websites operated under such domain names. Licensee will be the registrant of all current and approved future corporate, d/b/a and similar names and all identifiers for pages or venues in social, digital or mobile media (" *New Media IDs* "). Licensee acknowledges that such permitted registrant status does not limit or modify Licensor's ownership of the Marks that are embodied in the domain names and New Media IDs.

(b) Licensee. Licensee agrees that so long as this Agreement remains in force and effect it will:

(i) Use the Marks solely for the purposes allowed under this Agreement; and

(ii) Comply with the brand guidelines attached as Exhibit A, which may be amended during the Term of this Agreement in Licensor's discretion, provided that such amendments (w) are reasonable; (x) do not impose restrictions that are more onerous to Licensee viz-a-vis Licensor and its Affiliates' own use of Marks containing "Vivint" and any brand guidelines applied to any third parties; (y) are notified to Licensee in writing and (z) concern only the visual appearance of the Marks and do not impose restrictions that would limit or modify Licensee's other rights under this Agreement. Licensee shall have 270 days after the above notice to comply with any such amended guidelines.

#### ARTICLE 7 - TERM/ABANDONMENT

(a) Term. The term of this Agreement (" *Term* ") commences on the Effective Date and will continue in perpetuity, unless termination occurs pursuant to Section 7(b).

(b) Termination.

(i) Licensee may voluntarily terminate this Agreement after providing Licensor with written notice specifying the effective date of such termination.

(ii) Licensor may terminate this Agreement if a court of competent jurisdiction finds in a final, non-appealable judgment, that (x) Licensee has materially breached

this Agreement; (y) such breach caused ongoing material harm to the Mark and/or the “Vivint” Mark; and (z) such breach was not fully cured within thirty (30) days after written notice of such breach by Licensor indicating such breach with reasonable specificity (or, if Licensee has made diligent efforts towards cure in such 30-day period, within sixty (60) days after such written notice). Licensor may not otherwise terminate this Agreement for Licensee’s breach hereof, but may pursue all of its other rights and remedies (including the right to seek damages and temporary or permanent injunctive or equitable relief, including specific performance) in the event of any such breach.

(iii) Licensor may terminate this Agreement, effective upon written notice to Licensee if (a) Licensee makes a general assignment for the benefit of creditors; (b) Licensee admits in writing its inability to pay debts as they mature; (c) a trustee or receiver is appointed for substantially all of Licensee’s assets or (d) to the extent termination is enforceable under local law, a proceeding in bankruptcy is instituted against Licensee which is acquiesced in, is not dismissed within 120 days, or results in an adjudication of bankruptcy. The Parties intend and agree that Licensor cannot file for a U.S. bankruptcy without Licensee’s consent under that Limited Liability Company Agreement of Vivint Solar Licensing, LLC dated as of the date hereof. Notwithstanding the foregoing, in the event that Licensor is involuntarily subject to a U.S. bankruptcy, the Parties intend that, to the fullest extent permitted by law, rights under this Agreement shall be deemed licenses of rights to “intellectual property” for the purposes of Section 365 of the U.S. Bankruptcy Code (the “*Code*”) (11 U.S.C. §365), such that Licensor or the trustee shall not be eligible to reject this Agreement in such circumstances.

(iv) Licensor may terminate this Agreement, effective upon 365 days prior written notice to Licensee, if Licensor or Vivint is acquired (directly or indirectly, in whole or in part) by a Vivint Solar Competitor.

(v) Licensor may terminate this Agreement, effective immediately, if Licensee is acquired directly or indirectly by a Person Licensor reasonably determines to be a competitor or an Affiliate of a competitor of Vivint, Inc. (a “*Vivint Competitor*”) (which includes a transaction in which Licensee or its Affiliates is the nominal or literal acquirer, but the Vivint Competitor will directly or indirectly control the surviving company). In the event of such a termination, Licensor hereby grants to Licensee a license to continue using the Marks solely in compliance with the below:

(1) Within 30 days of the termination date, Licensee must file to remove the Marks from all corporate names and other registrations with any state corporate agencies or authorities and must thereafter diligently prosecute such name changes to completion;

(2) The Parties will cooperate to, at Licensee’s option, deactivate immediately or redirect all domain names and New Media IDs containing the Marks to domain names, websites and social, mobile or digital media pages or venues branded with the acquirer’s Source Indicators within 90 days of the termination date (and deactivate such domain names and New Media IDs promptly after such 90 day period);

(3) Within 30 days of the termination date, Licensee will remove all uses of the Marks as Source Indicators from the above websites and all such social, mobile or digital media pages or venues;

(4) Within 90 days of the termination date, Licensee must remove all Marks from all physical materials and collateral that Licensee makes visible to third parties, including business cards, invoices, receipts, stationery, packaging, displays, portable signage, advertising and promotional materials, products, manuals, and product literature;

(5) Within 270 days of the termination date, Licensee must remove all Marks from all heavy machinery, vehicles, tools, dyes and large, fixed signage and cease all other use of the Marks;

Provided that, for any of the foregoing deadlines under this Section 7(b)(v), in the event that Licensee is diligently and in good faith transitioning within such above time periods but is unable to fully complete such transition within the allotted time period, Licensor shall not refuse a reasonable request from Licensee for an extension for any transition deadlines.

(vi) Licensor may terminate this Agreement effective immediately if Licensee ceases using the Mark worldwide. For clarity, the foregoing applies to a unilateral abandonment of the Mark and not an acquisition described in Section 11(a).

(c) Abandonment.

(i) If Licensee, in any country or jurisdiction (but not worldwide), publicly announces or intends to abandon use of the Mark, it shall notify Licensor in advance in writing, Licensee hereby consents to Licensor's taking all reasonable actions in Licensor's or Licensee's name (at Licensor's expense) to protect the Mark in any country or jurisdiction, whether or not Licensee provides the foregoing notice.

(ii) If Vivint, Inc. publicly announces that it intends to cease use of "Vivint" as a Source Indicator in all countries and jurisdictions worldwide, at Licensee's request and expense, Licensor shall assign the Marks to Licensee.

(d) After Termination.

(i) After the Term, Licensee may make reference to the Marks (i) in internal historical, tax, legal, employment or similar records or for purposes of prospectus and similar disclosures as are reasonably necessary and appropriate to describe the historical relationship of Licensee with Licensor and its Affiliates; (ii) as required by applicable law or (iii) in plain text (not logo or stylized form) in a neutral, non-trademark manner that is permitted by trademark "fair use" principles.

(ii) Licensor shall not use or license the Marks for a period of five (5) years from the termination date of the Agreement. Licensee agrees, at Licensor's reasonable request and expense, to take all actions to protect the Marks from third party uses or registrations during such five (5) year period.

(iii) The following Sections survive termination of this Agreement: 4(a), 4(c), 7(b)(v), 7(d), 8(a)(ii) (with respect to Actions accruing or initiated prior to termination), 8(b), 10, 12 & 13.

## ARTICLE 8 - TRADEMARK INFRINGEMENT

(a) Enforcement.

(i) Each Party will notify the other Party in writing of any infringement, dilution or other violation (“**Infringement**”) of any of the Marks by a third party when such Infringement comes to the attention of such Party, and of any claim, suit or court Action which may be brought against Licensee or Licensor by a third party.

(ii) Licensor and Licensee shall consult on any potential Action relating to the Marks in the field of the Vivint Solar Business, and shall together determine whether Licensor, Licensee or the Parties jointly shall bring an Action (including policing and enforcing the Marks against other Persons) (any Party or Parties bringing any such Action, a “**Prosecuting Party**”). In the absence of a joint agreement, Licensee shall have the first right, but not the obligation, to bring an Action for any Infringement of the Marks in or related to the field of the Vivint Solar Business, at Licensee’s own expense, and to keep all proceeds recovered in connection therewith. If Licensee declines to bring an Action and Licensor reasonably believes that such Infringement may materially harm the “Vivint” Source Identifier outside the field of the Vivint Solar Business, Licensor or its Affiliates have the right, but not the obligation, to bring an Action at their own expense, and to keep all proceeds recovered in connection therewith. Licensee shall have no rights to pursue any Action relating to the Marks outside the Vivint Solar Business, unless Licensor fails to bring an Action and Licensee reasonably believes that an Action is necessary to protect the Marks in the Vivint Solar Business. In any unilateral Action under this Section 8(a)(ii), the Prosecuting Party shall notify the other Party (the “**Non-Prosecuting Party**”) in advance and give such Non-Prosecuting Party a reasonable consultation right and shall not take any action or execute any agreement in such Action that adversely affects the Marks, the “Vivint” name or the Non-Prosecuting Party’s rights therein without the prior written consent of such Non-Prosecuting Party, in its sole discretion. The Non-Prosecuting Party shall cooperate with the Prosecuting Party with respect to any such Action, including joining as a party to any litigation, if requested by the Prosecuting Party.

(b) Cooperation. Each Party agrees to cooperate in good faith with the other Party, at the other Party’s reasonable request and expense, to avoid and correct any actual consumer confusion over the proper owner of the Marks and to police and enforce the Marks against other Persons.

## ARTICLE 9 - REPRESENTATIONS

Each Party represents and warrants to the other Party that: (i) the warranting Party has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and (ii) this Agreement has been duly executed and delivered by the warranting Party and, assuming the due execution and delivery of this Agreement by both Parties,

constitutes a valid and binding agreement of the warranting Party enforceable against the warranting Party in accordance with its terms.

#### ARTICLE 10 - LIMITATION ON LIABILITY

EXCEPT IN CONNECTION WITH AN INDEMNITY OBLIGATION, NO CLAIM SHALL BE MADE BY ANY PARTY AGAINST THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT, DUTY IMPOSED BY LAW OR OTHERWISE), IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH.

#### ARTICLE 11 - ASSIGNMENT

(a) Assignment. Licensee may not assign or delegate this Agreement, in whole or in part, without the prior written consent of Licensor in its sole discretion, except as provided in this Section 11(a). Licensee may assign this Agreement in its entirety, without Licensor's consent, to an Affiliate as part of an internal reorganization, if Licensee guarantees performance of such Affiliate hereunder and such Affiliate agrees to bound by the terms of this agreement including the limitations on assignment set forth herein. Licensee may also assign this Agreement in its entirety, without Licensor's consent, to any Person who is not a Vivint Competitor and acquires all or substantially all of Licensee and its Affiliates' businesses and assets related to the Marks (in either an equity or asset sale). If Licensee or its Affiliates are acquired directly or indirectly by a Vivint Competitor (which includes a transaction in which Licensee or its Affiliates is the nominal or literal acquirer, but the Vivint Competitor will directly or indirectly control the surviving company), the provisions of Section 7(b)(v) shall apply, and Licensee shall notify Licensor of such intended acquisition promptly after executing a binding agreement that confirms the parties' intent to effect same (whether on the signing date or a future closing date). For purposes of this Section 11(a), an assignment of this Agreement shall include a change of control, merger, reorganization (in bankruptcy or otherwise), assumption in bankruptcy or equity and asset sale of Licensee, regardless of whether such transaction is considered an "assignment" of this Agreement under governing law or whether Licensee survives such transaction.

(b) Conditions on Assignment. For any permitted assignment of this Agreement, the assignee is deemed to assume automatically (but nonetheless must assume in writing) the assigning Party's obligations under this Agreement in writing. Licensor may not assign this Agreement, in whole or in part, without the prior written consent of Licensee in its sole discretion.

(c) Effect of Assignment. Any purported assignment or sublicense in violation of this Agreement shall be null and void *ab initio* and of no force and effect. In the event of a permitted assignment, this Agreement shall be binding upon and inure to the benefit of the Party's permitted successors and assigns, and shall no longer bind the assigning Party, but it shall not release the assigning Party from any breach of the Agreement preceding the date of the assignment.

## ARTICLE 12 - INDEMNIFICATION

(a) Indemnity by Licensee. Licensee shall indemnify, defend at its expense and hold harmless Licensor and its directors, officers, employees, agents and representatives from any third-party claims, losses, liabilities, damages, awards, settlements, judgments, fees, costs or expenses (including reasonable attorneys' fees and costs of suit) to the extent arising out of or relating to (i) any breach by Licensee of this Agreement or any action or inaction by any sublicensee hereof that would breach this Agreement if committed by Licensee; (ii) any negligence or willful misconduct by Licensee; or (iii) any Action against Licensee on the basis of a product defect or similar claim that is mistakenly directed at Licensor, except to the extent of Licensor's indemnity obligation.

(b) Indemnity by Licensor. Licensor shall indemnify, defend at its expense and hold harmless Licensee and its directors, officers, employees, agents and representatives from any third-party claims, losses, liabilities, damages, awards, settlements, judgments, fees, costs or expenses (including reasonable attorneys' fees and costs of suit) to the extent arising out of or relating to (i) any breach by Licensor of this Agreement; (ii) any negligence or willful misconduct by Licensor; or (iii) any Action against Licensor or its Affiliates on the basis of a product defect or similar claim related that is mistakenly directed at Licensee, except to the extent of Licensee's indemnity obligation.

(c) Procedures for Indemnification. Any Party seeking indemnification hereunder (an "**Indemnified Party**") shall notify the other Party (the "**Indemnifying Party**") promptly in writing. The Indemnifying Party shall assume and control the defense of such indemnified claim at its expense, provided that the Indemnified Party may join with counsel of its choice at its own expense. The Parties shall reasonably cooperate in the defense of any indemnified claim. No Party shall compromise or settle any indemnified claim in any manner that adversely affects (or may reasonably adversely affect) the other Party without the prior written consent of the other Party in its sole discretion.

## ARTICLE 13 - MISCELLANEOUS

(a) Dispute Resolution.

(i) The Parties will attempt in good faith to resolve any controversy or claim arising out or relating to this Agreement promptly by negotiations between representatives or senior executives ("**Representatives**") of the Parties who have authority to settle the controversy.

(ii) If a controversy or claim should arise, the appropriate Representatives of each Party will meet at least once and will attempt to resolve the matter. The Representatives will make every effort to meet as soon as reasonably possible at a mutually agreed time and place and in no event more than 30 days after requested by a party.

(iii) If the matter has not been resolved within 60 days of their first meeting, the Representatives shall refer the matter to senior executives who do not have direct responsibility for administration of this Agreement ("**Senior Executives**"). The Senior Executives shall meet for negotiations at a mutually agreed time and place within 30 days of the end of the 60-day period referred to above.

(iv) If the matter has not been resolved pursuant to the aforesaid procedure within 20 days of the Senior Executives meeting, either Party may initiate litigation or otherwise pursue whatever remedies may be available to such Party at law or in equity.

(v) Notwithstanding the foregoing, none of the above resolution periods shall be mandatory if an action taken by a Party will cause imminent, material and irreparable harm to the Marks or the VIVINT Source Identifier, and in such circumstances, such other Party may immediately, upon notice to the Party, seek relief by initiating litigation or otherwise pursuing whatever remedies may be available to such Party at law or in equity.

(vi) All deadlines specified in this Section 13(a) may be extended by mutual agreement.

(b) Expenses. All costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with the Agreement will be paid by the Party incurring those costs and expenses.

(c) Arms-Length. Each Party acknowledges and agrees that the Agreement is the product of an arm's-length negotiation, without duress, coercion, or collusion, and will be interpreted as agreements between two Parties of equal bargaining strength. It is the Parties' intention that the Agreement reflects the conditions which would be obtained between comparable, independent persons in substantially similar transactions (taking into account the relative responsibilities and risks between the Parties) and comparable circumstances (taking into account the location, market, and economic conditions), thereby providing the closest approximation of the workings of the open market.

(d) Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written negotiations, communications, discussions, and correspondence pertaining to the subject matter of this Agreement.

(e) Headings, "including." The article and section headings and any table of contents in the Agreement are for reference and convenience only and will not be considered in the interpretation of any of the Agreement. The term "including" means by way of example and not of limitation.

(f) Amendments and Waivers. The Agreement may only be amended or modified by an instrument in writing signed by Licensor and by Licensee.

(g) Binding Effect. The Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and permitted assigns.

(h) Notices. All notices, requests, demands, and other communications required or permitted to be given under the Agreement by either Party must be in writing delivered to the applicable Party at the following address:

if to Licensor:

Vivint, Inc.  
4931 North 300 West  
Provo, Utah 84604  
Attn: Alex Dunn, President  
E-Mail: adunn@vivint.com

with a copy to:

Vivint, Inc.  
4931 North 300 West  
Provo, Utah 84604  
Attn: Nathan Wilcox, General  
Counsel  
E-Mail: nwilcox@vivint.com

If to Licensor for purposes of consent under Section 4(b) (in which case notice must include at least one other form of communication other than e-mail):

Vivint, Inc.  
4931 North 300 West  
Provo, Utah 84604  
Attn: Nathan Wilcox, General Counsel  
E-Mail: nwilcox@vivint.com

if to Licensee:

Vivint Solar Licensing, LLC  
c/o Vivint Solar, Inc.  
4931 North 300 West  
Provo, Utah 84604  
Attn: Greg Butterfield, CEO  
E-mail: greg.butterfield@vivint.com

with a copy to:

Vivint Solar, Inc.  
4931 North 300 West  
Provo, Utah 84604  
Attn: Vivint Solar Legal  
Department  
E-mail: solarlegal@vivintsolar.com

or to such other address as any Party may designate by written notice to the other Party. Each notice, request, demand, or other communication will be deemed given and effective, as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by first-class U.S. Mail, postage prepaid, upon the earlier to occur of receipt or three days after deposit in the U.S. Mail; (iii) if sent by a recognized prepaid overnight courier service, one day after the date it is given to such service; (iv) if sent by facsimile, upon receipt of confirmation of successful transmission by the facsimile machine; and (iv) if sent by email, upon acknowledgement of receipt by the recipient.

(i) Governing Law. The interpretation and enforceability of the Agreement and the rights and liabilities of the Parties under the Agreement will be governed by the laws of the State of Utah without giving effect to any principles of conflict of laws.

(j) Jurisdiction. Each Party hereby irrevocably submits to the personal jurisdiction of any state or federal court sitting in the State of Utah, County of Salt Lake, in any suit, action or proceeding arising out of or relating to this Agreement. Each Party hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which that Party may raise now, or later have, to the laying of the venue of any such suit, action or proceeding brought in such a

court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Each Party agrees that, to the fullest extent permitted by applicable law, a final judgment in any such suit, action, or proceeding brought in such a court will be conclusive and binding upon such Party, and may be enforced in any court of the jurisdiction in which such Party is or may be subject by a suit upon such judgment. Each Party further agrees that personal jurisdiction over it may be effected by service of process by certified mail addressed as provided in Section 13(i), and when so made will be as if served upon it personally within the State of Utah.

(k) WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY EITHER PARTY AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY HEREBY AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE PREVIOUS SENTENCE, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM, OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF ANY PORTION OF THE AGREEMENT. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENT, RENEWAL, SUPPLEMENT, OR MODIFICATION TO THIS AGREEMENT.

(l) Specific Performance. The Parties agree that irreparable damage would occur if any provision of the Agreement were not performed in accordance with the terms of the Agreement, and that the Parties will be entitled to seek specific performance of the terms of the Agreement, in addition to any other remedy to which they are entitled at law or in equity.

(m) Attorneys' Fees. In any suit, action, counterclaim, or arbitration brought relating to this Agreement or the breach or alleged breach of this Agreement, the prevailing Party will be entitled to recover a reasonable allowance for attorneys' fees and litigation expenses. For purposes of this Section 13(m), "prevailing Party" will mean: (a) a prevailing Party in any litigation as determined by a court of competent jurisdiction; and (b) a Party who agrees to dismiss an action or proceeding with prejudice upon the other's payment of the sums allegedly due or performance of covenants allegedly breached.

(n) Severability. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, that provision will be enforced to the fullest extent permitted by applicable law, and the remainder of the Agreement will remain in full force and effect. If the time period or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum time period or scope that that court deems enforceable, then that court will reduce the time period or scope to the maximum time period or scope permitted by law. If the geographic region or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum geographic region or scope that that court deems

enforceable, then that court will reduce the geographic region or scope to the maximum time period or scope permitted by law.

(o) Counterparts. The Agreement and any document related to the Agreement may be executed by the Parties on any number of separate counterparts, by facsimile or email, and all of those counterparts taken together will be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or portable document format (".pdf") signature page will constitute an original for the purposes of this Section 13(p).

(p) Force Majeure. Neither Party will be in breach or default under this Agreement by reason of any failure or delay in the performance of its obligations under this Agreement where the failure or delay is due to any unforeseen cause beyond its control, including civil disturbances, riot, rebellion, invasion, epidemic, war, terrorism, embargo, natural disaster, acts of God, flood, fire, sabotage, other events or any other circumstances or causes beyond that Party's control; provided, however, that the delayed Party gives the other Party prompt written notice of the failure or delay and the reason for that failure or delay and uses its reasonable efforts to avoid or limit the resulting failure or delay. Subject to the foregoing sentence, the period of performance for the delayed obligation will be extended by the duration of the delay.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**LICENSOR :**

**VIVINT SOLAR LICENSING, LLC,**  
a Delaware limited liability company

By: VIVINT, INC.,  
a Utah corporation,  
its Managing Member

By: /s/ Alex Dunn  
Name: Alex Dunn  
Title: President

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

**LICENSEE :**

VIVINT SOLAR, INC.,  
a Delaware corporation

By: /s/ Greg Butterfield  
Name: Greg Butterfield  
Title: Chief Executive Officer

TRADEMARK LICENSE

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**Schedule 1**

**MARKS**

MARKS	REGISTRATION OR APPLICATION NUMBER
VIVINT.SOLAR	85/427,427
VIVINT.SOLAR	85/427,420
VIVINT SOLAR	85/427,430
VIVINT SOLAR	85/427,389
VIVINT SOLAR	85/427,422
VIVINT SOLAR	85/427,413
VIVINT SOLAR	85/427,400
VIVINT SOLAR	85/427,393
VIVINT.SOLAR	85/427,404

**Schedule 2**

**DOMAIN NAMES**

www.vivintsolar.com

**Exhibit A**

**BRAND GUIDELINES**

Exhibit A

TRADEMARK LICENSE

VIVINT SOLAR, INC.  
2014 EQUITY INCENTIVE PLAN

NOTICE OF STOCK OPTION GRANT AND STOCK OPTION AGREEMENT

Terms defined in the Vivint Solar, Inc. 2014 Equity Incentive Plan (the “**Plan**”) will have the same defined meanings in this Stock Option Agreement, including the Notice of Stock Option Grant (the “**Notice of Grant**”), Terms and Conditions of Stock Option Grant, and all exhibits to these documents (all together, the “**Agreement**”).

Participant has been granted an Option with the terms below and subject to the terms and conditions of the Plan and this Agreement:

Participant:	_____
Grant Number	_____
Grant Date	_____
Vesting Start Date	_____
Number of Shares Granted	_____
Exercise Price per Share	_____
Total Exercise Price	_____
Type of Option	_____ Incentive Stock Option
	_____ Nonstatutory Stock Option
Expiration Date	_____

Vesting Schedule :

Unless the vesting is accelerated, this Option will be exercisable to the extent vested on the following schedule:

[If Participant continues to be a Service Provider through each such date, 25% of the Shares subject to the Option will vest on the 1 year anniversary of the Vesting Start Date, and 1/48<sup>th</sup> of the Shares subject to the Option will vest on the same day as the Vesting Start Date each following month or if there is no corresponding day, on the last day of the month. All vesting will be rounded in accordance with Section 3(f) of the Plan]

If Participant ceases to be a Service Provider for any or no reason before Participant fully vests in the Option, the unvested portion of the Option will immediately terminate.

Exercise of Option :

- (a) If Participant dies or the termination of status as a Service Provider is due to a Disability, the vested portion of this Option will be exercisable for 12 months after the Termination of Status Date. For any other Termination of Status, the vested portion of this Option will only be exercisable for 3 months after the Termination of Status Date.
- (b) If there is a Change in Control or merger of the Company, Section 14 of the Plan may cause further limitations to the Option’s exercisability.
- (c) The Option will not be exercisable after the Expiration Date, unless Section 4(f) of the Plan, which tolls expiration in very limited cases when there are legal restrictions on exercise, permits later exercise.

Participant’s signature below indicates that:

- (i) He or she agrees that this Option is granted under and governed by the terms and conditions of the Plan and this Agreement, including their exhibits and appendices.
- (ii) He or she understands that the Company is not providing any tax, legal or financial advice and is not making any recommendations regarding Participant’s participation in the Plan, or Participant’s acquisition or sale of Shares.

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- (iii) He or she has reviewed the Plan and this Agreement, has had an opportunity to obtain the advice of personal tax, legal and financial advisors prior to signing this Agreement and fully understands all provisions of the Plan and Agreement. He or she will consult with his or her own personal tax, legal and financial advisors before taking any action related to the Plan.
- (iv) He or she has read and agrees to each provision of Section 11 of this Agreement.
- (v) He or she will notify the Company of any change to the contact address below.

PARTICIPANT

\_\_\_\_\_  
Signature

ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**TERMS AND CONDITIONS OF STOCK OPTION GRANT**

1. **Grant of Option**. The Company grants Participant an Option to purchase Shares of Common Stock as described on the Notice of Grant. If there is a conflict between the Plan and this Agreement, the Plan will prevail.

If the Notice of Grant designates this Option as an Incentive Stock Option (“**ISO**”), this Option is intended to qualify as an ISO under Code Section 422. Even if this Option is designated an Incentive Stock Option, to the extent it first become exercisable as to more than \$100,000 in any calendar year, the portion in excess of \$100,000 is not an ISO under Code Section 422(d) and that portion will be a Nonstatutory Stock Option (“**NSO**”). If there is any other reason this Option (or a portion of it) will not qualify as an ISO, to the extent of such nonqualification the Option will be an NSO. Participant understands that he or she will have no recourse against the Administrator, any member of the Company Group, or any officer or director of a member of the Company Group if his option is not an ISO.

2. **Vesting Schedule**. The Option will only be exercisable (also referred to as vested) under the Vesting Schedule on the Notice of Grant or as set out in Section 3 of this Agreement. Shares scheduled to vest on a date or upon the occurrence of a condition will not vest unless Participant continues to be a Service Provider beginning on the Grant Date through the date that the vesting is scheduled to occur. The Administrator may modify the vesting schedule under Section 10 of the Plan if Participant takes a leave of absence or has a reduction in hours worked.

3. **Administrator Discretion**. The Administrator may accelerate the vesting of any portion of the Option. In that case, the Option will be vested as of the date specified by the Administrator.

4. **Forfeiture upon Termination of Status as a Service Provider**. Any unvested Shares subject to the Option that have not vested as of the time of Participant’s termination as a Service Provider immediately will cease vesting and will revert to the Plan on the 30<sup>th</sup> day following the Termination of Status Date. The date of Participant’s termination as a Service Provider is detailed in Section 3(c) of the Plan.

5. **Death of Participant**. Any distribution or delivery to be made to Participant under this Award Agreement will, if Participant is then deceased, be made to the administrator or executor of Participant’s estate or, if the Administrator permits, Participant’s designated beneficiary. Any such transferee must furnish the Company with (a) written notice of his or her status as transferee, and (b) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

6. **Exercise of Option**.

(a) **Right to Exercise**. This Option may be exercised only before its Expiration Date and only under the Plan and this Agreement.

(b) **Method of Exercise**. To exercise this Option, Participant must deliver and the Administrator must receive an exercise notice according to procedures determined by the Administrator. The exercise notice must:

- (i) State the number of Shares as to which the Option is being exercised (“**Exercised Shares**”),
- (ii) Make any representations or agreements required by the Company,
- (iii) Be accompanied by a payment of the total Exercise Price for all Exercised Shares,
- (iv) Be accompanied by a payment of all required Tax-Related Items (defined in Section 8(a)) for all Exercised Shares.

On the date that both the Exercise Notice and payments due under Sections 6(b)(iii) and 6(b)(iv) are received by the Company for all Exercised Shares, the Option will be deemed exercised. The Administrator may designate a particular exercise notice to be used, but until a designation is made the exercise notice attached to this Agreement as **Exhibit C** may be used.

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7. Method of Payment. Participant may pay the Exercise Price by any of the following methods or a combination of methods:

cash;

check;

consideration received by the Company under a formal cashless exercise program adopted by the Company; or

surrender of other Shares, provided that accepting such Shares, in the sole discretion of the Administrator, will not result in any adverse accounting consequences to the Company. If Shares are surrendered, the value of those Shares will be the Fair Market Value on the date they are surrendered.

A non-U.S. resident may be restricted by the Appendix as to his or her method of exercise.

8. Tax Obligations.

(a) **Tax Withholding**.

(i) No Shares will be issued to Participant until satisfactory arrangements (as determined by the Administrator) have been made by Participant for the payment of income, employment, social insurance, payroll tax, fringe benefit tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant ("Tax-Related Items") that the Administrator determines must be withheld. If Participant is a non-U.S. employee, the method of payment of Tax-Related Items may be restricted by the Appendix.

(ii) The Company has the right (but not the obligation) to satisfy any Tax-Related Items by reducing the number of Shares otherwise deliverable to Participant.

(iii) If Participant does not arrange for the payment of any Tax-Related Items at the time of an attempted Option exercise, the Company may refuse to honor the exercise and refuse to deliver the Shares.

(iv) If Participant is subject to taxation in more than one jurisdiction between the Grant Date and the date of any relevant taxable or tax withholding event, the Company and/or Participant's employer (the "**Employer**"), or former employer may withhold or account for tax in greater than one jurisdiction.

(b) **Tax Reporting**. If the Option is partially or wholly an ISO, and if Participant sells or otherwise disposes of any the Shares acquired by exercising the ISO portion on or before the later of (i) the date 2 years after the Grant Date, or (ii) the date 1 year after the date of exercise, Participant may be subject to income tax withholding by the Company on the compensation income recognized by Participant and must immediately notify the Company in writing of the disposition. If Participant exercises the Option after 3 months have passed since Participant ceased to be an employee of the Company or a Parent or Subsidiary of the Company, it will no longer be an ISO.

(c) **Code Section 409A**. If the Option was granted with an Exercise Price that is less than the Fair Market Value of a Share on the Grant Date (a "**Discount Option**") there may be adverse tax consequences to Participant. These adverse consequences could include income recognition before exercise, a 20% penalty tax for U.S. taxpayers, and potentially penalties, interest, and state taxes. There could also be adverse tax consequences for non-U.S. taxpayers. Although the Company believes that the Exercise Price is no less than the Fair Market Value of a Share on the Grant Date, the Company cannot guarantee this.

9. Forfeiture or Clawback. The Option (including any proceeds, gains or other economic benefit received by Participant upon its exercise or the subsequent sale of Shares resulting from the exercise) will be subject to any compensation recovery or clawback policy implemented by the Company before or after the date of this Agreement. This includes any clawback policy adopted to comply with the requirements of Applicable Laws.

10. Rights as Stockholder. Participant's rights as a stockholder of the Company, including as to voting Shares and the receipt of dividends and distributions on such Shares will not begin until certificates representing Shares have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant.

11. Acknowledgements and Agreements. Participant's signature on the Notice of Grant accepting the Option, indicates that:

(a) HE OR SHE ACKNOWLEDGES AND AGREES THAT THE VESTING OF THIS OPTION IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AND THAT BEING HIRED, GRANTED THIS OPTION, AND EXERCISING THE OPTION WILL NOT RESULT IN VESTING.

(b) HE OR SHE FURTHER ACKNOWLEDGES AND AGREES THAT THIS OPTION AND AGREEMENT DO NOT CREATE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF PARTICIPANT'S EMPLOYER (OR ENTITY TO WHICH HE OR SHE IS PROVIDING SERVICES) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

(c) He or she agrees that this Agreement and its incorporated documents reflect all agreements on its subject matters and that he or she is not accepting this Agreement based on any promises, representations, or inducements other than those reflected in the Agreement.

(d) He or she understands that exercise of the Option is governed strictly by Sections 6, 7, and 8 and that failure to comply with those Sections could result in the expiration of the Option, even if an attempt was made to exercise.

(e) He or she understands the consequences of Discount Options described in Section 8(c) and agrees that the Company will have no liability to him or her if the Option is determined to be a Discount Option.

(f) He or she agrees that delivery of any documents related to the Plan or Awards under the Plan, including the Plan, the Agreement, the Plan's prospectus and any reports of the Company provided generally to the Company's stockholders, may be made by electronic delivery and that he or she will participate in the Plan through any electronic system designated by the Company.

(g) He or she accepts that all good faith decisions or interpretations of the Administrator regarding the Plan and Awards under the Plan are binding, conclusive and final.

(h) He or she agrees that the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan.

(i) He or she agrees that the grant of an Option is voluntary and occasional and does not create any contractual or other right to receive future grants of Options, or benefits in lieu of Options, even if Options have been granted in the past.

(j) He or she agrees that all decisions regarding future Awards, if any, will be at the sole discretion of the Company.

(k) He or she agrees that he or she is voluntarily participating in the Plan.

(l) He or she agrees that the Option and any Shares acquired under the Plan are not intended to replace any pension rights or compensation.

(m) He or she agrees that the Option and Shares acquired under the Plan and the income and value of same, are not part of normal or expected compensation for any purpose, including for purposes of calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, pension or retirement or welfare benefits or similar payments.

(n) He or she agrees that the future value of the Shares underlying the Option is unknown, indeterminable, and cannot be predicted with certainty.

(o) He or she understands that if the underlying Shares do not increase in value, the Option will have no intrinsic monetary value.

(p) He or she understands that if the Option is exercised, the value of Shares received on exercise may increase or decrease in value, even below the Exercise Price.

(q) He or she agrees that, for purposes of the Option, Participant's engagement as a Service Provider will be considered terminated as of the Termination of Status Date (regardless of the reason for such termination and whether or not the termination is

later found to be invalid or in breach of employment laws in the jurisdiction where Participant is a Service Provider or the terms of Participant's engagement agreement, if any), and unless otherwise expressly provided in this Agreement or determined by the Administrator.

(r) He or she agrees that any right to vest in the Option under the Plan, if any, will terminate as of the Termination of Status Date and will not be extended by any notice period ( e.g ., Participant's period of service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws (including common law, if applicable) in the jurisdiction where Participant is a Service Provider or Participant's engagement agreement or employment agreement, if any, unless Participant is providing bona fide services during such time).

(s) He or she agrees that the period (if any) during which Participant may exercise the Option after a termination of Participant's engagement as a Service Provider will start on the date Participant ceases to actively provide services and will not be extended by any notice period mandated under employment laws in the jurisdiction where Participant is employed or terms of Participant's engagement agreement, if any.

(t) He or she agrees that the Administrator has the exclusive discretion to determine when Participant is no longer actively providing services for purposes of his or her Option grant (including whether Participant may still be considered to be providing services while on a leave of absence).

(u) He or she agrees that none of the Company and any member of the Company Group will be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States Dollar that may affect the value of the Option or of any amounts due to Participant pursuant to the exercise of the Option or the subsequent sale of any Shares acquired upon exercise.

(v) He or she has read and agrees to the Data Privacy Provisions of Section 12 of this Agreement.

(w) He or she agrees that no claim or entitlement to compensation or damages shall arise from forfeiture of the unvested Shares subject to the Option resulting from the termination of Participant's status as a Service Provider (for any reason whatsoever whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Participant is a Service Provider or the terms of Participant's service agreement, if any), and in consideration of the grant of the Option to which Participant is otherwise not entitled, Participant irrevocably agrees never to institute any claim against the Company or any member of the Company Group, waives his or her ability, if any, to bring any such claim, and releases the Company and all members of the Company Group from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, Participant shall be deemed irrevocably to have agreed not to pursue such claim and agrees to execute any and all documents necessary to request dismissal or withdrawal of such claim.

## 12. Data Privacy.

(a) *Participant voluntarily consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Agreement and any other Award materials (" Data ") by and among, as applicable, the Employer, the Company and any member of the Company Group for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.*

(b) *Participant understands that the Company and the Employer may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all Options or any other entitlement to stock awarded, canceled, exercised, vested, unvested or outstanding in Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan.*

(c) *Participant understands that Data will be transferred to one or more stock plan service provider(s) selected by the Company, which may assist the Company with the implementation, administration and management of the Plan. Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient's country (e.g., the United States) may have different data privacy laws and protections than Participant's country. Participant understands that if he or she resides outside the United States, he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the Company and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of implementing, administering and managing Participant's participation in the Plan.*

(d) *Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that if he or she resides in certain jurisdictions outside the United States, to the extent required by Applicable Laws he or she may, at any time, request access to Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents given by accepting this Option, in any case without cost, by contacting in writing his or her local human resources representative. Further, Participant understands that he or she is providing these consents on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, his or her engagement as a Service Provider with the Employer will not be adversely affected; the only consequence of refusing or withdrawing Participant's consent is that the Company will not be able to grant Participant awards under the Plan or administer or maintain awards. Therefore, Participant understands that refusing or withdrawing his or her consent may affect Participant's ability to participate in the Plan. Participant understands that he or she may contact his or her local human resources representative for more information on the consequences of Participant's refusal to consent or withdrawal of consent.*

13. Miscellaneous

(a) **Address for Notices** . Any notice to be given to the Company under the terms of this Agreement must be addressed to the Company at Vivint Solar, Inc., 4931 N. 300 W., Provo, Utah, 84604, Attention: Stock Plan Administrator, until the Company designates another address in writing.

(b) **Non-Transferability of Option** . This Option may not be transferred other than by will or the laws of descent or distribution and may be exercised during the lifetime of Participant only by Participant.

(c) **Binding Agreement** . If the Option is transferred, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties to this Agreement.

(d) **Additional Conditions to Issuance of Stock** . If the Company determines that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the purchase by, or issuance of Shares to, Participant (or his or her estate) under the Option, no purchase or issuance will occur until such condition has been satisfied in a manner acceptable to the Company. The Company will try to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange.

(e) **Captions** . Captions provided in this Agreement are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

(f) **Agreement Severable** . If any provision of this Agreement is held invalid or unenforceable, that provision will be severed from the remaining provisions of this Agreement and the invalidity or unenforceability will have no effect on the remainder of the Agreement.

(g) **Modifications to the Agreement** . Modifications to this Agreement or the Plan can be made only in an express written contract (including a unilateral contract) executed by a duly authorized officer of the Company. The Company reserves the right to revise this Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Code Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Code Section 409A in connection to this Option, and to comply with other Applicable Laws.

(h) **Non-U.S. Appendix** . The Option is subject to any special terms and conditions set forth in any appendix to this Agreement for Participant's country (the "**Appendix** "). If Participant relocates to a country included in the Appendix, the special terms and conditions for that country will apply to Participant to the extent the Company determines that applying such terms and conditions is necessary or advisable for legal or administrative reasons.

(i) **Choice of Law ; Choice of Forum** . The Plan, all Awards and all determinations made and actions taken under the Plan, to the extent not otherwise governed by the laws of the United States, will be governed by the laws of the State of Delaware without giving effect to principles of conflicts of law. For purposes of litigating any dispute that arises under this Plan, a Participant's acceptance of an Award is his or her consent to the jurisdiction of the State of Delaware, and agree that any such litigation will be conducted in Delaware Court of Chancery, or the federal courts for the United States for the District of Delaware, and no other courts, regardless of where a Participant's services are performed.

(j) **Modifications to the Award Agreement** . This Award Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Award Agreement, the Company reserves the right to revise the Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Stock Option Grant.

(k) **Waiver** . Participant acknowledges that a waiver by the Company of a breach of any provision of this Award Agreement will not operate or be construed as a waiver of any other provision of this Award Agreement, or of any subsequent breach by Participant or any other Participant.

**EXHIBIT B**

**APPENDIX TO STOCK OPTION AGREEMENT**

***Terms and Conditions***

This Appendix to Stock Option Agreement (the “ **Appendix** ”) includes additional terms and conditions that govern the Option granted to Participant under the Plan if Participant resides in one of the countries listed below at the time of grant or Participant moves to one of the listed countries. Capitalized terms used but not defined in this Appendix have the meanings set forth in the Plan and/or the Agreement.

***Notifications***

This Appendix may also include information regarding exchange controls and certain other issues of which Participant should be aware with respect to participation in the Plan. The information is based on the securities, exchange control, and other laws in effect in the respective countries as of [DATE]. Such laws are often complex and change frequently. As a result, the Company strongly recommends that Participant not rely on the information in this Appendix as the only source of information relating to the consequences of participation in the Plan because the information may be out of date at the time Participant exercises the Option or sells Shares acquired under the Plan.

In addition, the information contained in this Appendix is general in nature and may not apply to Participant’s particular situation, and the Company is not in a position to assure Participant of a particular result. Participant is advised to seek appropriate professional advice as to how the relevant laws in Participant’s country may apply to Participant’s situation.

Finally, if Participant is a citizen or resident of a country other than the one in which Participant is currently working, transfers employment after the Option is granted, or is considered a resident of another country for local law purposes, the information in this Appendix may not apply to Participant, and the Administrator will determine to what extent the terms and conditions in this Appendix apply.

[INSERT COUNTRY SPECIFIC PROVISIONS]

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**EXHIBIT C**

**VIVINT SOLAR, INC.  
2014 EQUITY INCENTIVE PLAN  
EXERCISE NOTICE**

Vivint Solar, Inc.  
4931 N. 300 W.  
Provo, Utah 84604

Attention: Stock Administration

Purchaser Name:	
Stock Option Grant Date:	
Exercise Date:	
Number of Shares Exercised:	
Per Share Exercise Price:	
Total Exercise Price:	
Exercise Price Payment Method:	
Tax-Related Items Payment Method:	

The information in the table above is incorporated in this Exercise Notice.

1. **Exercise of Option** . Effective as the Exercise Date, I elect to purchase Number of Shares Exercised (“ *Exercised Shares* ”) under the referenced Stock Option Agreement (the “ *Agreement* ”) for the Total Exercise Price.
  
  2. **Delivery of Payment** . With this Exercise Notice, I am delivering the Total Exercise Price and any required Tax-Related Items to be paid in connection with purchase of the Exercised Shares. I am paying my total purchase price by Purchase Price Payment Method and the Tax-Related Items by Tax-Related Items Payment Method.
  
  3. **Representations of Purchaser** . I acknowledge
    - (a) I have received, read and understood the Plan and the Agreement and agree to be bound by their terms and conditions.
    - (b) The exercise will not be completed until this Exercise Notice, Total Exercise Price, and all Tax-Related Payments are received by the Company.
    - (c) I have no rights as a stockholder of the Company, including as to voting Shares and the receipt of dividends and distributions on such Shares until certificates representing Shares have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to me.
    - (d) That no adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance, except as provided in Section 13 of the Plan.
    - (e) There may be adverse tax consequences to exercising the Option and I am not relying on the Company for tax advice but have had an opportunity to obtain the advice of personal tax, legal and financial advisors prior to exercising.
    - (f) The modification and choice of law provisions of the Agreement also govern this Exercise Notice.
-

4. **Entire Agreement; Governing Law** . The Plan and *Agreement* are incorporated by reference. This Exercise Notice, the Plan and the *Agreement* are the entire agreement of the parties with respect to the Options and this exercise and supersede in their entirety all prior undertakings and agreements of the Company and Purchaser with respect to their subject matter.

Submitted by:

PARTICIPANT

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Signature

ADDRESS:

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**VIVINT SOLAR, INC.  
2014 EQUITY INCENTIVE PLAN**

**NOTICE OF RESTRICTED STOCK UNIT GRANT AND RESTRICTED STOCK UNIT AGREEMENT**

Terms defined in the Vivint Solar, Inc. 2014 Equity Incentive Plan (the “**Plan**”) will have the same defined meanings in this Restricted Stock Unit Agreement, including the Notice of Restricted Stock Unit Grant (the “**Notice of Grant**”), the Terms and Conditions of Restricted Stock Unit Grant, and all exhibits to these documents (all together, the “**Agreement**”).

Participant has been granted this Restricted Stock Unit (“**RSU**”) Grant with terms below and subject to the terms and conditions of the Plan and this Award Agreement, as follows:

Participant:

Grant		Number
Grant		Date
Vesting	Start	Date
Number	of	Shares
		Granted

Vesting Schedule:

Unless the vesting is accelerated, the Restricted Stock Units will vest on the following schedule:

[If Participant continues to be a Service Provider through each such date, 25% of the Shares subject to the RSU will vest on the first RSU Quarterly Vesting Date that is on or after the 1 year anniversary of the Vesting Start Date, and on each of the next 12 RSU Quarterly Vesting Dates, 1/16 of the number of Restricted Stock Units granted will vest, subject to Participant continuing to be a Service Provider through each such date.]

“RSU Quarterly Vesting Date” means the second Wednesday of the month of each of February, May, August, and November of any Fiscal Year.

If Participant ceases to be a Service Provider for any or no reason before Participant vests in the Restricted Stock Units, the unvested Restricted Stock Units will immediately terminate.

Participant’s signature below indicates that:

- (i) He or she agrees that this Restricted Stock Unit Grant is granted under and governed by the terms and conditions of the Plan and this Agreement, including their exhibits and appendices.
- (ii) He or she understands that the Company is not providing any tax, legal or financial advice and is not the Company making any recommendations regarding Participant’s participation in the Plan, or Participant’s acquisition or sale of Shares.
- (iii) He or she has reviewed the Plan and this Agreement, has had an opportunity to obtain the advice of personal tax, legal and financial advisors prior to signing this Agreement and fully understands all provisions of the Plan and Agreement. He or she will consult with his or her own personal tax, legal

and financial advisors before taking any action related to the Plan.

(iv) He or she has read and agrees to each provision of Section 10 of this Agreement.

(v) He or she will notify the Company of any change to the contact address below.

PARTICIPANT

Signature

ADDRESS:

## EXHIBIT A

### TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT GRANT

1. Grant. The Company grants the Participant a Restricted Stock Unit Grant as described on the Notice of Grant. If there is a conflict between the Plan and this Agreement, the Plan will prevail.

2. Company's Obligation to Pay. Each Restricted Stock Unit represents the right to receive a Share on the date it vests. Unless and until the Restricted Stock Units have vested in the manner set forth in Sections 3 or 4, Participant will have no right to payment of any such Restricted Stock Units. Prior to actual payment of any vested Restricted Stock Units, the Restricted Stock Units will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any Restricted Stock Units that vest in accordance with Sections 3 or 4 will be paid to Participant (or in the event of Participant's death, to his or her estate) in whole Shares, subject to Participant satisfying any obligations for Tax-Related Items (as defined in Section 7). Subject to the provisions of Section 4 and Section 7, vested Restricted Stock Units will be paid in whole Shares as soon as practicable after vesting, but in each such case within the period 60 days following the vesting date. In no event will Participant be permitted, directly or indirectly, to specify the taxable year of the payment of any Restricted Stock Units payable under this Award Agreement.

3. Vesting Schedule. The Restricted Stock Units will only vest under the Vesting Schedule on the Notice of Grant or as set out in Section 4 of this Agreement. Shares scheduled to vest on a date or upon the occurrence of a condition will not vest unless Participant continues to be a Service Provider beginning on the Grant Date through the date that the vesting is scheduled to occur. The Administrator may modify the vesting schedule under Section 10 of the Plan if Participant takes a leave of absence or has a reduction in hours worked.

4. Administrator Discretion. The Administrator, in its discretion, may accelerate the vesting of any portion of the Restricted Stock Units at any time, subject to the terms of the Plan. In that case, the Restricted Stock Units will be vested as of the date specified by the Administrator. The payment of Shares vesting pursuant to this Section 4 will be paid at a time or in a manner that is exempt from, or complies with, Section 409A.

5. Forfeiture upon Termination of Status as a Service Provider. Any Restricted Stock Units that have not vested as of the time of Participant's termination as a Service Provider will cease vesting and will revert to the Plan on the 30<sup>th</sup> day following the Termination of Status Date. The date of Participant's termination as a Service Provider is detailed in Section 3(c) of the Plan.

6. Death of Participant. Any distribution or delivery to be made to Participant under this Award Agreement will, if Participant is then deceased, be made to the administrator or executor of Participant's estate or, if the Administrator permits, Participant's designated beneficiary. Any such transferee must furnish the Company with (a) written notice of his or her status as transferee, and (b) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

7. Tax Obligations.

(a) Tax Withholding.

(i) No Shares will be issued to Participant until satisfactory arrangements (as determined by the Administrator) have been made by Participant for the payment of income, employment, social insurance, payroll tax, fringe benefit tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant ("Tax-Related Items") that the Administrator determines must be withheld. If Participant is a non-U.S. employee, the method of payment of Tax-Related Items may be restricted by the Appendix. If Participant fails to make satisfactory arrangements for

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the payment of any Tax-Related Items hereunder at the time any applicable Restricted Stock Units otherwise are scheduled to vest pursuant to Sections 3 or 4 or Tax-Related Items related to Restricted Stock Units otherwise are due, Participant will permanently forfeit such Restricted Stock Units and any right to receive Shares thereunder and the Restricted Stock Units will be returned to the Company at no cost to the Company.

(ii) The Company has the right (but not the obligation) to satisfy any Tax-Related Items by reducing the number of Shares otherwise deliverable to Participant and, until determined otherwise by the Company, this will be the method by which such tax withholding obligations are satisfied.

(iii) Further, if Participant is subject to taxation in more than one jurisdiction between the Grant Date and the date of any relevant taxable or tax withholding event, the Company and/or Participant's employer (the "**Employer**"), or former employer may withhold or account for tax in greater than one jurisdiction.

(b) **Code Section 409A .**

(i) If the vesting of any portion of the Restricted Stock Units is accelerated in connection with Participant's termination as a Service Provider (provided that such termination is a "separation from service" within the meaning of Section 409A ) and if (x) Participant is a "specified employee" within the meaning of Section 409A at the time of such termination as a Service Provider and (y) the payment of such accelerated Restricted Stock Units will result in the imposition of additional tax under Section 409A if paid to Participant on or within the 6-month period following Participant's termination as a Service Provider, then the payment of such accelerated Restricted Stock Units will not be made until the first day after the end of the 6-month period.

(ii) If the termination as a Service Provider is due to death, the delay under Section 7(b)(i) will not apply. If Participant dies following his or her termination as a Service Provider, the delay under Section 7(b)(i) will be disregarded and the Restricted Stock Units will be paid in Shares to Participant's estate as soon as practicable following his or her death.

(iii) All payments and benefits under this Restricted Stock Unit Grant are intended to be exempt from, or comply with, the requirements of Section 409A so that none of the Restricted Stock Units or Shares issuable upon the vesting of Restricted Stock Units will be subject to the additional tax imposed under Section 409A. The Company and Participant intend that any ambiguities be interpreted so that the Restricted Stock Units are exempt from or comply with Section 409A.

(iv) Each payment under these Restricted Stock Units is intended to be a separate payment as described in Treasury Regulations Section 1.409A-2(b)(2).

8. Forfeiture or Clawback. The Restricted Stock Units (including any proceeds, gains or other economic benefit received by the Participant from a subsequent sale of Shares issued upon vesting) will be subject to any compensation recovery or clawback policy implemented by the Company before or after the date of this Agreement. This includes any clawback policy adopted to comply with the requirements of Applicable Laws.

9. Rights as Stockholder. Participant's rights as a stockholder of the Company, including as to voting Shares and the receipt of dividends and distributions on such Shares will not begin until certificates representing Shares have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant.

10. Acknowledgements and Agreements . Participant's signature on the Notice of Grant accepting the Restricted Stock Unit Grant, indicates that:

(a) HE OR SHE ACKNOWLEDGES AND AGREES THAT THE VESTING OF THESE RESTRICTED STOCK UNITS IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AND THAT BEING HIRED, AND GRANTED THESE RESTRICTED STOCK UNITS WILL NOT RESULT IN VESTING.

(b) HE OR SHE FURTHER ACKNOWLEDGES AND AGREES THAT THESE RESTRICTED STOCK UNITS AND AGREEMENT DO NOT CREATE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF PARTICIPANT'S EMPLOYER (OR ENTITY TO WHICH HE OR SHE IS PROVIDING SERVICES) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

(c) He or she agrees that this Agreement and its incorporated documents reflect all agreements on its subject matters and that he or she is not accepting this Agreement based on any promises, representations, or inducements other than those reflected in the Agreement.

(d) He or she agrees that delivery of any documents related to the Plan or Awards under the Plan , including the Plan, the Agreement, the Plan's prospectus and any reports of the Company provided generally to the Company's stockholders, may be made by electronic delivery and that he or she will participate in the Plan through any electronic system designated by the Company.

(e) He or she accepts that all good faith decisions or interpretations of the Administrator regarding the Plan and Awards under the Plan are binding, conclusive and final.

(f) He or she agrees that the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan.

(g) He or she agrees that the grant of Restricted Stock Units is voluntary and occasional and does not create any contractual or other right to receive future grants of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted in the past.

(h) He or she agrees that all decisions regarding future Awards, if any, will be at the sole discretion of the Company.

(i) He or she agrees that he or she is voluntarily participating in the Plan.

(j) He or she agrees that the Restricted Stock Units and any Shares acquired under the Plan are not intended to replace any pension rights or compensation.

(k) He or she agrees that the Restricted Stock Units and Shares acquired under the Plan and the income and value of same, are not part of normal or expected compensation for any purpose, including for purposes of calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, pension or retirement or welfare benefits or similar payments.

(l) He or she agrees that the future value of the Shares underlying the Restricted Stock Units is unknown, indeterminable, and cannot be predicted with certainty;

(m) He or she agrees that, for purposes of the Restricted Stock Units, Participant's engagement as a Service Provider will be considered terminated as of the Termination of Status Date (regardless of the reason for such termination and whether or not the termination is later found to be invalid or in breach of employment laws in the jurisdiction where Participant is a Service Provider or the terms of Participant's engagement agreement, if any), and unless otherwise expressly provided in this Agreement or determined by the Administrator.

(n) He or she agrees that any right to vest in the Restricted Stock Units under the Plan, if any, will terminate as of the Termination of Status date and will not be extended by any notice period ( e.g. , Participant's period of service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws (including common law, if applicable) in the jurisdiction where Participant is a Service Provider or Participant's engagement agreement or employment agreement , if any, unless Participant is providing bona fide services during such time).

(o) He or she agrees that the Administrator has the exclusive discretion to determine when Participant is no longer actively providing services for purposes of his or her Restricted Stock Units (including whether Participant may still be considered to be providing services while on a leave of absence).

(p) He or she agrees that none of the Company, the Employer, or any Parent or Subsidiary will be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States Dollar that may affect the value of the Restricted Stock Units or of any amounts due to Participant pursuant to the settlement of the Restricted Stock Units or the subsequent sale of any Shares acquired upon settlement.

(q) He or she has read and agrees to the Data Privacy Provisions of Section 11 of this Agreement.

(r) He or she agrees that no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from the termination of Participant's status as a Service Provider (for any reason whatsoever whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Participant is a Service Provider or the terms of Participant's service agreement, if any), and in consideration of the grant of the Restricted Stock Units to which Participant is otherwise not entitled, Participant irrevocably agrees never to institute any claim against the Company or any member of the Company Group, waives his or her ability, if any, to bring any such claim, and releases the Company and all members of the Company Group from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, Participant shall be deemed irrevocably to have agreed not to pursue such claim and agrees to execute any and all documents necessary to request dismissal or withdrawal of such claim.

11. Data Privacy.

(a) *Participant voluntarily consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Agreement and any other Award materials (" Data ") by and among, as applicable, the Employer, the Company and any member of the Company Group for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.*

(b) *Participant understands that the Company and the Employer may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all equity awards or any other entitlement to*

stock awarded, canceled, exercised, vested, unvested or outstanding in Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan.

(c) Participant understands that Data will be transferred to one or more stock plan service provider(s) selected by the Company, which may assist the Company with the implementation, administration and management of the Plan. Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient's country (e.g., the United States) may have different data privacy laws and protections than Participant's country. Participant understands that if he or she resides outside the United States, he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the Company and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of implementing, administering and managing Participant's participation in the Plan.

(d) Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that if he or she resides in certain jurisdictions outside the United States, to the extent required by Applicable Laws he or she may, at any time, request access to Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents given by accepting this award of Restricted Stock Units, in any case without cost, by contacting in writing his or her local human resources representative. Further, Participant understands that he or she is providing these consents on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, his or her engagement as a Service Provider with the Employer will not be adversely affected; the only consequence of refusing or withdrawing Participant's consent is that the Company will not be able to grant Participant awards under the Plan or administer or maintain awards. Therefore, Participant understands that refusing or withdrawing his or her consent may affect Participant's ability to participate in the Plan. Participant understands that he or she may contact his or her local human resources representative for more information on the consequences of Participant's refusal to consent or withdrawal of consent.

## 12. Miscellaneous

(a) **Address for Notices** . Any notice to be given to the Company under the terms of this Agreement must be addressed to the Company at Vivint Solar, Inc., 4931 N. 300 W., Provo, Utah 84604, Attention: Stock Plan Administrator, until the Company designates another address in writing.

(b) **Non-Transferability of Restricted Stock Units** . The Restricted Stock Units may not be transferred other than by will or the laws of descent or distribution.

(c) **Binding Agreement** . If any Restricted Stock Units are transferred, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties to this Agreement.

(d) **Additional Conditions to Issuance of Stock** . If the Company determines that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to, Participant (or his or her estate), issuance will occur until such condition has been satisfied in a manner acceptable to the Company. The Company will try to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange.

(e) **Captions** . Captions provided in this Agreement are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

(f) **Agreement Severable** . If any provision of this Agreement is held invalid or unenforceable, that provision will be severed from the remaining provisions of this Agreement and the invalidity or unenforceability will have no effect on the remainder of the Agreement.

(g) **Modifications to the Agreement** . Modifications to this Agreement or the Plan can be made only in an express written contract (including a unilateral contract) executed by a duly authorized officer of the Company. The Company reserves the right to revise this Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Code Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Code Section 409A in connection to these Restricted Stock Units, and to comply with other Applicable Laws.

(h) **Non-U.S. Appendix** . These Restricted Stock Units are subject to any special terms and conditions set forth in any appendix to this Agreement for Participant's country (the "**Appendix** "). If Participant relocates to a country included in the Appendix, the special terms and conditions for that country will apply to Participant to the extent the Company determines that applying such terms and conditions is necessary or advisable for legal or administrative reasons.

(i) **Choice of Law; Choice of Forum**. The Plan, all Awards and all determinations made and actions taken under the Plan, to the extent not otherwise governed by the laws of the United States, will be governed by the laws of the State of Delaware without giving effect to principles of conflicts of law. For purposes of litigating any dispute that arises under this Plan, a Participant's acceptance of an Award is his or her consent to the jurisdiction of the State of Delaware, and agree that any such litigation will be conducted in Delaware Court of Chancery, or the federal courts for the United States for the District of Delaware, and no other courts, regardless of where a Participant's services are performed.

(j) **Modifications to the Award Agreement** . This Award Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Award Agreement, the Company reserves the right to revise the Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to these Restricted Stock Units.

(k) **Waiver** . Participant acknowledges that a waiver by the Company of a breach of any provision of this Award Agreement will not operate or be construed as a waiver of any other provision of this Award Agreement, or of any subsequent breach by Participant or any other Participant.

## EXHIBIT B

### APPENDIX TO RESTRICTED STOCK UNIT AGREEMENT

#### *Terms and Conditions*

This Appendix to Restricted Stock Unit Agreement (the “ **Appendix** ”) includes additional terms and conditions that govern the Restricted Stock Units granted to Participant under the Plan if Participant resides in one of the countries listed below at the time of grant or the Participant moves to one of the listed countries . Capitalized terms used but not defined in this Appendix have the meanings set forth in the Plan and/or the Agreement.

#### *Notifications*

This Appendix may also include information regarding exchange controls and certain other issues of which Participant should be aware with respect to participation in the Plan. The information is based on the securities, exchange control, and other laws in effect in the respective countries as of [DATE]. Such laws are often complex and change frequently. As a result, the Company strongly recommends that Participant not rely on the information in this Appendix as the only source of information relating to the consequences of participation in the Plan because the information may be out of date at the time Participant sells Shares acquired under the Plan.

In addition, the information contained in this Appendix is general in nature and may not apply to Participant’s particular situation, and the Company is not in a position to assure Participant of a particular result. Participant is advised to seek appropriate professional advice as to how the relevant laws in Participant’s country may apply to Participant’s situation.

Finally, if Participant is a citizen or resident of a country other than the one in which Participant is currently working, transfers employment after the Restricted Stock Units are granted, or is considered a resident of another country for local law purposes, the information in this Appendix may not apply to Participant, and the Administrator will determine to what extent the terms and conditions in this Appendix apply.

[INSERT COUNTRY SPECIFIC PROVISIONS]

Name: [ ]  
 Employee Badge ID: [ ]

**NONQUALIFIED STOCK OPTION AGREEMENT**  
 under the  
 V SOLAR HOLDINGS, INC. 2013 OMNIBUS INCENTIVE PLAN

THIS AGREEMENT (the “Agreement”) by and between V Solar Holdings, Inc., a Delaware corporation (the “Company”), and the individual named on the signature page hereto (the “Participant”) is made as of the date set forth on such signature page. Capitalized terms not otherwise defined herein shall have the same meanings as in the Plan.

**RECITALS:**

WHEREAS, the Company has adopted the 2013 Omnibus Incentive Plan attached hereto as Exhibit A, and as may be amended or supplemented from time to time in accordance with the terms thereof (the “Plan”), the terms of which are hereby incorporated by reference and made a part of this Agreement; and

WHEREAS, the Committee (as defined in the Plan) has determined that it would be in the best interests of the Company and its stockholders to grant the Options (as defined below) provided for herein to the Participant pursuant to the Plan and the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. Grant of Options. (a) The Company hereby grants to the Participant on the date of grant set forth on the signature page hereto (the “Date of Grant”) the right and option to purchase, on the terms and conditions hereinafter set forth, the number of shares of Common Stock set forth on the signature page hereto (the “Options”), subject to adjustment as set forth in the Plan and this Agreement. The exercise price per Share subject to the Options shall be the “Exercise Price” specified on the signature page hereto. Each Option is intended to be a nonqualified stock option, and is not intended to be treated as an option that complies with Section 422 of the Code.

(b) The Options shall vest and become exercisable in accordance with Schedules A-1, A-2, and A-3 attached hereto. Any Option which has become vested in accordance with the foregoing shall be referred to as a “Vested Option”, and any Option which is not a Vested Option, an “Unvested Option”.

2. Exercise of Options; Termination of Employment.

(a) Termination of Employment. If the Participant’s Employment terminates for any reason, the Unvested Options shall be immediately canceled by the Company without consideration and the Vested Options shall remain exercisable for the period set forth in Section 2(b).

(b) Period of Exercise . Subject to the provisions of the Plan and this Agreement, the Participant may exercise all or any of the Vested Options at any time prior to the tenth anniversary of the Date of Grant (the “ Expiration Date ”). Notwithstanding the foregoing, if the Participant’s Employment terminates prior to the Expiration Date, if a Restrictive Covenant Violation occurs, or in the event the Participant engages in Competitive Activity not constituting a Restrictive Covenant Violation, the Vested Options shall remain exercisable for the applicable period set forth below:

(i) Death or Disability . If the Participant’s Employment is terminated due to the Participant’s death or by the Company due to the Participant’s Disability, the Participant may exercise the Vested Options during the period ending on the earlier of (x) one year following such termination of Employment and (y) the Expiration Date;

(ii) Termination by the Company Other than with Cause and Other than Due to Death or Disability . If the Participant’s Employment is terminated by the Company not with Cause and not due to the Participant’s death or Disability, the Participant may exercise the Vested Options during the period ending on the earlier of (x) 60 days following such termination of Employment and (y) the Expiration Date;

(iii) Resignation by the Participant . If the Participant’s Employment is terminated by the Participant while grounds for a termination by the Company with Cause do not exist, the Participant may exercise the Vested Options during the period ending on the earlier of (x) 30 days following such termination of Employment and (y) the Expiration Date;

(iv) Termination with Cause; Resignation When Grounds for Cause Exist; Restricted Activity; Competitive Activity . If (A) the Participant’s Employment is terminated by the Company with Cause, (B) the Participant’s Employment is terminated by the Participant during or following the existence of grounds for a termination by the Company with Cause, (C) a Restrictive Covenant Violation has occurred, or (D) the Participant engages in Competitive Activity not constituting a Restrictive Covenant Violation, the Vested Options shall immediately terminate in full and cease to be exercisable (notwithstanding any other provision in this Section 2(b)).

(c) Method of Exercise and Form of Payment .

(i) Subject to Section 2(b) of this Agreement and Section 7(d) of the Plan, the Vested Options may be exercised (in whole or in part) by delivering written or electronic notice to the Company (or electronic or telephonic instructions to the extent provided by the Committee) at its principal office of intent to so exercise (an “ Exercise Notice ”); provided, that an Option may be exercised with respect to whole shares of Common Stock only, and provided, further, that any fractional shares of Common Stock shall be settled in cash. The Exercise Notice shall specify the number of shares of Common Stock for which the Option is being exercised and shall be accompanied by payment in full of the Exercise Price. The payment of the Exercise Price may be made at the election of the Participant (A) in cash or its equivalent ( *e.g.* , by check or, if permitted by the Committee, a full-recourse promissory note), or (B) if permitted by the

Committee, (1) in shares of Common Stock having a Fair Market Value equal to the aggregate Exercise Price for the shares of Common Stock being purchased and satisfying such other reasonable requirements as may be imposed by the Committee; provided, that such shares of Common Stock have been held by the Participant for any period as established from time to time by the Committee in order to avoid adverse accounting treatment applying generally accepted accounting principles and provided, further, that such shares of Common Stock are not subject to any pledge or other security interest (2) partly in cash and partly in such shares, (3) if there is a public market for the shares of Common Stock at such time, to the extent permitted by the Committee and subject to such rules as may be established by the Committee, through the delivery of irrevocable instructions to a broker to sell shares of Common Stock obtained upon the exercise of the Option and to deliver promptly to the Company an amount out of the proceeds of such sale equal to the aggregate Exercise Price for such shares of Common Stock being purchased, or (4) using a net settlement mechanism whereby the number of shares of Common Stock delivered upon the exercise of the Option will be reduced by a number of shares of Common Stock that has a Fair Market Value equal to the Exercise Price. The Participant shall not have any rights to dividends or other rights of a stockholder with respect to shares of Common Stock subject to an Option until the Participant has given written notice of exercise of the Option, paid in full for such shares and, if applicable, has satisfied any other conditions imposed by the Committee pursuant to the Plan.

(ii) Notwithstanding any other provision of the Plan or this Agreement to the contrary, absent an available exemption to registration or qualification, an Option may not be exercised prior to the completion of any registration or qualification of the Option and/or the shares of Common Stock subject to such Option, under applicable state and federal securities or other laws, or under any ruling or regulation of any governmental body or national securities exchange that the Committee shall in its sole discretion determine to be necessary or advisable; provided, that the Company shall use commercially reasonable efforts to take such actions as are necessary and appropriate to register or qualify for exemption the shares of Common Stock subject to the Option so it may be exercised.

(iii) Upon the Company's determination that an Option has been validly exercised as to any of the shares of Common Stock subject to such Option, the Company may issue certificates in the Participant's name for such shares. However, the Company shall not be liable to the Participant for damages relating to any delays in issuing the certificates to the Participant, any loss by the Participant of the certificates, or any mistakes or errors in the issuance of the certificates or in the certificates themselves.

(iv) In the event of the Participant's death, exercise of the Vested Options (to the extent exercisable pursuant to Section 2), and all other rights of the Participant under this Agreement (including Section 3(a)) shall remain exercisable by the Participant's executor or administrator, or the person or persons to whom the Participant's rights under this Agreement shall pass by will or by the laws of descent and distribution as the case may be. Any heir or legatee of the Participant shall take rights herein granted subject to the terms and conditions hereof.

(v) As a condition to the exercise of any Option evidenced by this Agreement, the Participant shall execute the Shareholders Agreement in the form attached hereto as Exhibit B, or as may be entered into by and among Parent, the Company, and the Company's shareholders and amended or supplemented from time to time in accordance with the terms thereof, the "Shareholders Agreement") (provided that, if the Participant is already a party to the Shareholders Agreement, then the shares of Common Stock acquired under the Option shall automatically become subject to such agreements without any further action).

3. Certain Sales Upon Termination of Employment.

(a) Put Option.

(i) Prior to a Public Offering, if the Participant's Employment with the Company and its Subsidiaries is terminated (x) due to the death of the Participant or (y) by the Company and its Subsidiaries as a result of the Disability of the Participant, then the Participant and the Participant's Permitted Transferees (as defined in Section 9 hereof, and together with the Participant hereinafter sometimes collectively referred to as the "Participant's Family Group") shall have the right, subject to the provisions of Section 4 hereof, for 180 days following the later of (A) the date that is 210 days after the date of termination of Participant's Employment and (B) the date that is six months and one day after any Vested Option is exercised, to sell to the Company (the "Put Right"), and the Company shall be required to purchase (subject to the provisions of Section 4 hereof), on one occasion from each member of the Participant's Family Group, all (but not less than all) of the shares of Common Stock acquired pursuant to the exercise of the Vested Options then held by the Participant's Family Group at a price per Share equal to Fair Market Value of such shares (measured as of the date that the relevant election to purchase such shares is delivered (the "Repurchase Notice Date")). In order to exercise its rights with respect to shares of Common Stock pursuant to this Section 3(a)(i), the Participant's Family Group shall also be required to simultaneously exercise any similar rights it may have with respect to any other shares of Common Stock of the Company held by the Participant's Family Group in accordance with the terms of the agreements pursuant to which such other shares were acquired from the Company.

(ii) If the Participant's Family Group desires to exercise the Put Right, the members of the Participant's Family Group shall send one written notice to the Company setting forth such members' intention to collectively sell all of their shares of Common Stock pursuant to Section 3(a)(i), which notice shall include the signature of each member of the Participant's Family Group. Subject to the provisions of Section 4(a), the closing of the purchase shall take place at the principal office of the Company on a date specified by the Company no later than the 60th day after the giving of such notice.

(b) Call Option.

(i) If the Participant's Employment terminates for any reason or in the event of a Restrictive Covenant Violation or the Participant's engaging in a Competitive

Activity, the Company shall have the right and option, but not the obligation, to purchase any or all of the shares of Common Stock held by the Participant and the Participant's Family Group, during either of the one-year periods following each of (x) the date of termination of Participant's Employment, (y) the date on which a Restrictive Covenant Violation or Competitive Activity occurs (or, if later, the date on which the Board has actual knowledge thereof) or (z) the date that is six months and one day after the date on which the Participant acquires such share of Common Stock pursuant to the exercise of a Vested Option (or such later date as is necessary in order to avoid the application of adverse accounting treatment to the Company) (the "Call Option"), in each case, at a price per Share determined as follows (it being understood that if shares of Common Stock subject to repurchase hereunder may be repurchased at different prices, the Company may elect to repurchase only the portion of the shares of Common Stock subject to repurchase hereunder at the lower price):

- (A) Death or Disability. If the Participant's Employment is terminated due to the death of the Participant or (y) by the Company and its Subsidiaries as a result of the Disability of the Participant, then the purchase price per Share will be Fair Market Value (measured as of the Repurchase Notice Date);
- (B) Termination with Cause; Resignation when Grounds Exist for Cause; Early Resignation. If the Participant's Employment is terminated (x) by the Company or any of its Subsidiaries with Cause, (y) by the Participant at a time when grounds exist for a termination with Cause, or (z) by the Participant prior to November 16, 2014 (or, if the Participant commences Employment after November 16, 2012, prior to the second anniversary of the Participant's date of hire), then the purchase price per Share will be the lesser of (A) Fair Market Value (measured as of the Repurchase Notice Date) and (B) Cost;
- (C) Termination without Cause; Other Resignation. If the Participant's Employment is terminated (x) by the Company without Cause or (y) by the Participant under circumstances where Sections 3(b)(i)(A) and 3(b)(i)(B) do not apply, then the purchase price per Share will be Fair Market Value (measured as of the Repurchase Notice Date);
- (D) Restrictive Covenant Violation. If a Restrictive Covenant Violation occurs, then the purchase price per Share will be the lesser of (1) Fair Market Value (measured as of the Repurchase Notice Date) and (2) Cost; and
- (E) Competitive Activity. In the event the Participant engages in Competitive Activity not constituting a Restrictive Covenant Violation, then the purchase price per Share will be Fair Market Value (measured as of the Repurchase Notice Date).

For all purposes under this Agreement or related to the Options or shares of Common Stock acquired pursuant to the Options, "Cost" shall mean the price per Share paid by the Participant, less any dividends received by the Participant and/or the Participant's Family Group in respect of such Share, if any; provided, that "Cost" may not be less than zero. The Call Option (except in

the case of any event described in Section 3(b)(i)(B) and 3(b)(i)(C)) shall expire upon the occurrence of a Public Offering.

(ii) If the Company desires to exercise the Call Option pursuant to this Section 3(b), the Company shall, not later than the expiration of the period set forth in Section 3(b) send written notice to each member of the Participant's Family Group of its intention to purchase shares of Common Stock, specifying the number of such shares to be purchased (the "Call Notice"). Subject to the provisions of Section 4, the closing of the purchase shall take place at the principal office of the Company on a date specified by the Company no later than the 30th day after the giving of the Call Notice.

(iii) Notwithstanding the foregoing, if the Company elects not to exercise the Call Option pursuant to this Section 3(b), Parent may, or may elect to cause one of its Affiliates or another designee, to purchase such shares at any time on the same terms and conditions set forth in this Section 3(b) by providing written notice to each member of the Participant's Family Group of its intention to purchase shares of Common Stock.

(c) Obligation to Sell Several. If there is more than one member of the Participant's Family Group, the failure of any one member thereof to perform its obligations hereunder shall not excuse or affect the obligations of any other member thereof, and the closing of the purchases from such other members by the Company shall not excuse, or constitute a waiver of its rights against, the defaulting member.

4. Certain Limitations on the Company's Obligations to Purchase Shares of Common Stock.

(a) Deferral of Purchases. Notwithstanding anything to the contrary contained herein, the Company shall not be obligated to purchase any shares of Common Stock at any time pursuant to Section 3, regardless of whether it has delivered a Call Notice or received a Put Notice, (i) to the extent that the purchase of such shares would result in (A) a violation of any law, statute, rule, regulation, policy, order, writ, injunction, decree or judgment promulgated or entered by any federal, state, local or foreign court or governmental authority applicable to the Company or any of its Subsidiaries or Affiliates or any of its or their property, or (B) after giving effect thereto, an event which would constitute (or with notice or lapse of time or both would constitute) an event of default under any of the financing documents of Parent, its Subsidiaries, or its Affiliates from time to time and any restrictive financial covenants contained in the organizational documents of Parent, its Subsidiaries, or its Affiliates (a "Financing Default"); (ii) if immediately prior to such purchase there exists a Financing Default which prohibits such purchase; or (iii) to the extent that there is a lack of available cash on hand of the Company. The Company shall, within fifteen (15) days of learning of any such fact, so notify the Participant that it is not obligated to purchase hereunder.

(ii) Notwithstanding anything to the contrary contained herein, any shares of Common Stock which the Company elects or is required to purchase, but which in accordance with Section 4(a) are not purchased at the applicable time provided in Section 3, shall be purchased by the Company (x) by delivery of a promissory note for

the applicable purchase price payable at such time as would not result in a Financing Default, bearing interest at the prime lending rate in effect as of the date of the exercise of the call right or at the Applicable Federal Rate at such time, if greater; or (y) if purchase by delivery of a promissory note as described in clause (x) is not permitted due to the terms of any outstanding Company indebtedness, or otherwise, then, for the applicable purchase price (measured as of the actual purchase date) on or prior to the fifteenth (15th) day after such date or dates that the purchase of such shares are no longer prohibited under Section 4(a) and the Company shall give the Participant five (5) days' prior notice of any such purchase.

(b) Payment for Shares of Common Stock. If at any time the Company elects or is required to purchase any shares of Common Stock pursuant to Section 3, the Company shall pay the purchase price for the shares of Common Stock it purchases (i) first, by the cancellation of any indebtedness, if any, owing from the Participant to the Company or any of its Subsidiaries (which indebtedness shall be applied pro rata against the proceeds receivable by each member of the Participant's Family Group receiving consideration in such repurchase) and (ii) then, by the Company's delivery of a check or wire transfer of immediately available funds for the remainder of the purchase price, if any, against delivery of the certificates or other instruments, if any, representing the shares of Common Stock so purchased, duly endorsed; provided that if (x) any of the conditions set forth in Section 4(a) exists or (y) such purchase of shares of Common Stock would result in a Financing Default, in each case which prohibits such cash payment (either directly or indirectly as a result of the prohibition of a related cash dividend or distribution) (each a "Cash Payment Restriction"), the portion of the cash payment so prohibited may be made, to the extent such payment is not prohibited, by the Company's delivery of a junior subordinated promissory note (which shall be subordinated and subject in right of payment to the prior payment of any debt outstanding under the senior financing agreements and any modifications, renewals, extensions, replacements and refunding of all such indebtedness) of the Company (a "Junior Subordinated Note") in a principal amount equal to the balance of the purchase price, payable within ten days after the Cash Payment Restriction no longer exists, and bearing interest payable (and compounded to the extent not so paid) as of the last day of each year at the "prime rate" as published for JP Morgan Chase Bank from time to time, and all such accrued and unpaid interest payable on the date of the payment of principal (or, if applicable, the last installment of principal), with payments to be applied in the order of: first to any enforcement costs incurred by the Participant or the Participant's Family Group, second to interest and third to principal. The Company shall have the rights set forth in clause (i) of the first sentence of this Section 4(b) whether or not the member of the Participant's Family Group selling such shares is an obligor of the Company. The principal of, and accrued interest on, any such Junior Subordinated Note may be prepaid in whole or in part at any time at the option of the Company. To the extent that the Company is prohibited from paying accrued interest, that is required to be paid on any Junior Subordinated Note prior to maturity, due to the existence of any Cash Payment Restriction, such interest shall be cumulated, compounded annually, and accrued until and to the extent that such Cash Payment Restriction no longer exists, at which time such accrued interest shall be immediately paid. Notwithstanding any other provision in this Agreement, the Company may elect to pay the purchase price hereunder in shares or other equity securities of one of its respective direct or indirect Subsidiaries with a fair market value equal to the applicable purchase price, provided that such Subsidiary promptly repurchases such shares or other equity securities

for cash equal to the applicable purchase price or a Junior Subordinated Note with a principal amount equal to the applicable purchase price.

5. Restrictive Covenants (Appendix A). The Participant acknowledges and recognizes the highly competitive nature of the businesses of the Company and accordingly agrees, in the Participant's capacity as an investor and equity holder in the Company and its Affiliates, to the Restrictive Covenants contained in Appendix A to this Agreement and/or incorporated herein by reference. The Participant acknowledges and agrees that the Company's remedies at law for a breach or threatened breach of any of the provisions of Appendix A would be inadequate and the Company would suffer irreparable damages as a result of such breach or threatened breach. In recognition of this fact, the Participant agrees that, in the event of such a breach or threatened breach by the Participant, regardless of whether a transfer of Options or shares of Common Stock to a Permitted Transferee has occurred and in addition to any remedies at law, the Company, without posting any bond, shall be entitled to cease making any payments or providing any benefit otherwise required by this Agreement and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available. For the purposes of this Agreement, the Participant shall have engaged in "Competitive Activity" if the Participant engages in any activity otherwise prohibited by Appendix A after the time limitations set forth in Appendix A.

6. Repayment of Proceeds. If the Participant's Employment is terminated by the Company with Cause or a Restrictive Covenant Violation occurs, or the Company discovers after any termination of Employment that grounds for a termination with Cause existed at the time thereof, then the Participant shall be required to pay to the Company, within 10 business days' of the Company's request to the Participant therefor, an amount equal to the excess, if any, of (a) the aggregate after-tax proceeds (taking into account all amounts of tax that would be recoverable upon a claim of loss for payment of such proceeds in the year of repayment) Participant received upon the sale or other disposition of, or dividends or distributions in respect of, shares of Common Stock acquired under any Option over (b) the aggregate price paid by the Participant for such shares. Any reference in this Agreement to grounds existing for a termination with Cause shall be determined without regard to any notice period, cure period or other procedural delay or event required prior to finding of, or termination for, Cause. The foregoing remedy shall not be exclusive.

7. No Right to Continued Employment. Neither the Plan nor this Agreement shall be construed as giving the Participant the right to be retained in the employ of, or in any consulting relationship to, the Company or any Affiliate. Further, the Company or any Affiliate may at any time dismiss the Participant or discontinue any consulting relationship, free from any liability or any claim under the Plan or this Agreement, except as otherwise expressly provided herein.

8. Legend on Certificates. The certificates representing the shares of Common Stock purchased by exercise of an Option shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange upon which such shares are listed or quoted or market to which the shares of Common Stock are admitted for trading and, any applicable federal or state or any other applicable laws

and the Company's Certificate of Incorporation and Bylaws, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

9. Transferability. The Option granted hereunder may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant otherwise than by will or by the laws of descent and distribution, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance. No such permitted transfer of an Option to heirs or legatees of the Participant shall be effective to bind the Company unless the Committee shall have been furnished with written notice thereof and a copy of such evidence as the Committee may deem necessary to establish the validity of the transfer and the acceptance by the transferee or transferees of the terms and conditions thereof. During the Participant's lifetime, an Option is exercisable only by the Participant.

10. Withholding. No shares of Common Stock shall be delivered pursuant to any exercise of a Vested Option until payment in full of the Exercise Price therefor is received by the Company and the Participant has paid to the Company an amount equal to any Federal, state, local and non-U.S. income and employment taxes required to be withheld in accordance with the terms of this Agreement and the Plan. The Participant shall be required to pay to the Company or any Affiliate in cash and the Company or its Affiliates shall have the right and are authorized to withhold any applicable withholding taxes in respect of an Option, its exercise, or any payment or transfer under or with respect to an Option and to take such other action as may be necessary in the opinion of the Committee to satisfy all obligations for the payment of such withholding taxes. Notwithstanding the foregoing, at any time when the Company's shares of Common Stock are listed on a national or regional securities exchange or market system, or share prices are quoted on the Over the Counter Bulletin Board, the Participant may elect to have such withholding obligation satisfied by surrendering to the Company or any Affiliate a portion of the shares of Common Stock obtained upon exercise of the Option upon the exercise of an Option (but only to the extent of the minimum withholding required by law), and the shares of Common Stock so surrendered by the Participant shall be credited against any such withholding obligation at the Fair Market Value of such shares on the date of such surrender.

11. Securities Laws. Upon the acquisition of any shares of Common Stock pursuant to the exercise of an Option, the Participant will make or enter into such written representations, warranties and agreements as the Committee may reasonably request in order to comply with applicable securities laws or with this Agreement.

12. Notices . Any notice under this Agreement shall be addressed as follows:

if to the Company:

V Solar Holdings, Inc. c/o 313  
Acquisition LLC 4931 North 300  
West  
Provo, Utah 84604 Attention:  
President

with a copy to the attention of the General Counsel, and with copies (which shall not constitute notice) to:

313 Acquisition LLC  
4931 North 300 West  
Provo, Utah 84604 Attention:  
President

with a copy to the attention of the General Counsel,

and

The Blackstone Group, L.P. 345 Park Avenue  
New York, NY 10152 Attention:  
Peter Wallace

and

Simpson Thacher & Bartlett LLP 425 Lexington  
Avenue  
New York, NY 10017 Attention: Gregory T.  
Grogan

If to the Participant:

At the address appearing in the personnel records of the Company for the Participant.

Following the date hereof, notice may be delivered to either party at such other address as either party hereto may hereafter designate in writing to the other. Any such notice shall be deemed effective upon receipt thereof by the addressee.

13. Governing Law . This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware applicable to contracts made and performed wholly within the state of Delaware (except that the provisions of Section 1 of

Appendix A shall be governed by the law of the state where Participant is principally employed by the Company or its Subsidiaries or, if the Participant and the Company or its Subsidiaries are party to any employment agreement, the law of the state that governs such employment agreement), without giving effect to the conflict of law provisions that would direct the application of the law of any other jurisdiction. Any suit, action or proceeding with respect to this Agreement, or any judgment entered by any court in respect of any thereof, shall be brought exclusively in any court of competent jurisdiction in Salt Lake City, Utah, and each of the Company and the members of Participant's Family Group hereby submits to the exclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment.

Each of the members of Participant's Family Group and the Company hereby irrevocably waives

(i) any objections which it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court of competent jurisdiction in Salt Lake City, Utah, (ii) any claim that any such suit, action or proceeding brought in any such court has been brought in any inconvenient forum and (iii) any right to a jury trial.

14. Option Subject to Plan and Shareholders Agreement. By entering into this Agreement the Participant agrees and acknowledges that the Participant has received and read a copy of the Plan and the Shareholders Agreement. The Options and the shares of Common Stock received upon exercise of an Option are subject to the Plan and the Shareholders Agreement. The terms and provisions of the Plan and the Shareholders Agreement, as each may be amended from time to time are hereby incorporated by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan and the Shareholders Agreement, the applicable terms and provisions of the Plan will govern and prevail. In the event of a conflict between any applicable term or provision of the Plan and any term or provision of the Shareholders Agreement, the applicable terms and provisions of the Shareholders Agreement will govern and prevail.

15. Amendment. The Committee may waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate this Agreement, but no such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination shall materially diminish the rights of the Participant hereunder without the consent of the Participant unless such action is made in accordance with the terms of the Plan.

16. Entire Agreement. This Agreement and the documents referred to herein or delivered pursuant hereto which form a part hereof contain the entire understanding of the parties with respect to the subject matter hereof and thereof, provided, that if the Company or its Affiliates is a party to one or more agreements with the Participant related to the matters subject to Section 5 and Appendix A, such other agreements shall remain in full force and effect and continue in addition to this Agreement and nothing in this Agreement or incorporated by reference shall supersede or replace any other confidentiality, non-competition, non-solicitation, non-disparagement or similar agreement entered into between the Participant and the Company (or any subsidiary or Affiliate) to the extent that such agreement is more protective of the business of the Company or any subsidiary or Affiliate), and provided, further, that to the extent a Participant is party to any agreement that would, by its terms, vary the terms of this Agreement (other than with respect to the matters subject to Section 5 hereof) or the Shareholders Agreement (or provide more favorable rights and remedies to the Participant), such terms will be

deemed amended and shall not apply to the Options granted herein or any shares of Common Stock acquired under the Option. There are no restrictions, agreements, promises, representations, warranties, covenants or undertakings with respect to the subject matter hereof other than those expressly set forth herein and therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter, other than as specifically provided for herein.

17. Injunctive Relief. Participant and Participant's Permitted Transferees each acknowledges and agrees that a violation of any of the terms of this Agreement will cause the Company and its Affiliates irreparable injury for which adequate remedy at law is not available. Accordingly, it is agreed that the Company shall be entitled to an injunction, restraining order or other equitable relief to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction in the United States or any state thereof, in addition to any other remedy to which it may be entitled at law or equity.

18. Rights Cumulative; Waiver. The rights and remedies of Participant and the Company and/or its Affiliates under this Agreement shall be cumulative and not exclusive of any rights or remedies which either would otherwise have hereunder or at law or in equity or by statute, and no failure or delay by either party in exercising any right or remedy shall impair any such right or remedy or operate as a waiver of such right or remedy, nor shall any single or partial exercise of any power or right preclude such party's other or further exercise or the exercise of any other power or right. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by either party to exercise any right or privilege hereunder shall be deemed a waiver of such party's rights or privileges hereunder or shall be deemed a waiver of such party's rights to exercise the same at any subsequent time or times hereunder.

19. Signature in Counterparts. This Agreement may be signed in counterparts, including electronic counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[ *Signature page follows* ]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the parties hereto as of this

\_\_\_\_\_.  
Grant Date : [ ]

Vesting Start Date : [ ]

Shares subject to Option : [ ]

Exercise Price : [ ]

**Participant**

Name: [ ]

Acknowledged and agreed as of the date above first written:

**V Solar Holdings, Inc.**

By:  
Its:

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**Time-Vesting Options**

1. General. One-third of the Options granted hereunder shall be “Time- Vesting Options”. Subject to the Participant’s continued Employment through the applicable vesting date, Time-Vesting Options shall vest and become exercisable with respect to twenty percent (20%) of the Time-Vesting Options on each of the first five anniversaries of the date specified as the “Vesting Start Date” on the signature page hereto.

2. Change in Control of the Company. Notwithstanding the foregoing, in the event of a Change in Control during the Participant’s continued Employment, the Time Option shall, to the extent not then vested or previously forfeited or cancelled, become fully vested and exercisable.

3. Change in Control of Parent Prior to a Public Offering. Notwithstanding the foregoing, in the event of a “Parent Change in Control” (as defined below) prior to a Public Offering and during the Participant’s continued Employment, the Time Option shall, to the extent not then vested or previously forfeited or cancelled, become fully vested and exercisable. “Parent Change of Control” shall mean any Person or Group, other than The Blackstone Group, L.P. and/or its affiliates (“Sponsor”), is or becomes the “beneficial owner” (as such term is defined in Rules 13d-3 and 13d-5 under the Exchange Act (or any successor rule thereto)), directly or indirectly, of 50% or more of the total voting power of the voting equity of Parent, including by way of merger, consolidation or otherwise and Sponsor ceases to directly or indirectly control the board of directors or other governing body of Parent.

**Tier I Performance-Vesting Options**

1. One-third of the Options granted hereunder shall be Tier I Performance- Vesting Options.

2. The Tier I Performance-Vesting Options shall become Vested Options at such time, prior to the termination of Participant's Employment for any reason, that Parent shall have received cash proceeds in respect of its shares of Common Stock held from time to time by Parent in an amount that equals \$250,000,000 more than Parent's cumulative invested capital in respect of its shares of Common Stock (which amount shall be deemed to be \$75,000,000, plus any amounts invested after November 16, 2012 and through the applicable measurement date).

3. In addition, notwithstanding any provision of this Agreement to the contrary, the Tier I Performance-Vesting Option, to the extent not then vested and exercisable, shall be immediately and automatically canceled without consideration at such time as Parent shall cease to have an investment in the Company's Common Stock.

1. One-third of the Options granted hereunder shall be Tier II Performance- Vesting Options.

2. The Tier II Performance-Vesting Options shall become Vested Options at such time, prior to the termination of Participant's Employment for any reason, that Parent shall have received cash proceeds in respect of its shares of Common Stock held from time to time by Parent in an amount that equals \$500,000,000 more than Parent's cumulative invested capital in respect of its shares of Common Stock (which amount shall be deemed to be \$75,000,000, plus any amounts invested after November 16, 2012 and through the applicable measurement date).

3. In addition, notwithstanding any provision of this Agreement to the contrary, the Tier II Performance-Vesting Option, to the extent not then vested and exercisable, shall be immediately and automatically canceled without consideration at such time as Parent shall cease to have an investment in the Company's Common Stock.

**Appendix A**

**Restrictive Covenants**

1. **Non-Competition; Non-Solicitation; Non-Disparagement.**

(a) The Participant acknowledges and recognizes the highly competitive nature of the businesses of the Company and its Affiliates and Subsidiaries, and accordingly agrees as follows:

(i) During the Participant's employment with the Company or its Affiliates or Subsidiaries (the "Employment Term") and for a period of one year following the date the Participant ceases to be employed by the Company or its Affiliates or Subsidiaries (the "Restricted Period"), the Participant will not, whether on the Participant's own behalf or on behalf of or in conjunction with any person, firm, partnership, joint venture, association, corporation or other business organization, entity or enterprise whatsoever (for the purposes of this Appendix A, a "Person"), directly or indirectly solicit or assist in soliciting the business of any then-current or prospective client or customer of any member of the Restricted Group in competition with the Restricted Group in the Business.

indirectly:

(ii) During the Restricted Period, the Participant will not directly or

(A) engage in the Business anywhere in the United States, or in any geographical area that is within 100 miles of any geographical area where the Restricted Group engages in the Business, including, for the avoidance of doubt, by entering into the employment of or rendering any services to a Core Competitor, except where such employment or services do not relate in any manner to the Business;

(B) acquire a financial interest in, or otherwise become actively involved with, any Person engaged in the Business, directly or indirectly, as an individual, partner, shareholder, officer, director, principal, agent, trustee or consultant; or

(C) intentionally and adversely interfere with, or attempt to adversely interfere with, business relationships between the members of the Restricted Group and any of their clients, customers, suppliers, partners, members or investors.

(iii) Notwithstanding anything to the contrary in this Appendix A, the Participant may, directly or indirectly own, solely as an investment, securities of any Person engaged in a Business (including, without limitation, a Core Competitor) which are publicly traded on a national or regional stock exchange or on the over-the-counter market if the Participant (i) is not a controlling person of, or a member of a group which controls, such person and (ii) does not, directly or indirectly, own 2% or more of any class of securities of such Person.

(iv) During the Employment Term and the Restricted Period, the Participant will not, whether on the Participant's own behalf or on behalf of or in conjunction with any Person, directly or indirectly:

- (A) solicit or encourage any employee of the Restricted Group to leave the employment of the Restricted Group;
- (B) hire any executive-level employee, key personnel, or manager-level employee (i.e., any operations manager or district sales manager) who was employed by the Restricted Group as of the date of the Participant's termination of employment with the Company or who left the employment of the Restricted Group coincident with, or within one year prior to or after, the termination of the Participant's employment with the Company; or
- (C) encourage any consultant of the Restricted Group to cease working with the Restricted Group.

(v) For purposes of this Agreement:

(A) "Restricted Group" shall mean, collectively, the Company and its subsidiaries and, to the extent engaged in the Business, their respective Affiliates (including The Blackstone Group L.P. and its Affiliates).

(B) "Business" shall mean (1) origination, installation, or monitoring services related to residential or commercial security, life-safety, energy management or home automation services, (2) installation or servicing of residential or commercial solar panels or sale of electricity generated by solar panels, (3) design, engineering or manufacturing of technology or products related to residential or commercial security, life-safety, energy management or home automation services and/or (4) provision of television, wireless voice and/or data services, including internet, through a common internet connectivity pipeline into the home.

(C) "Core Competitor" shall mean ADT Security Services/Tyco Integrated Security, Security Networks, LLC, Protection 1, Inc., Protect America, Inc., Stanley Security Solutions, Inc., Vector Security, Inc., Slomins, Inc., Monitronics International, Inc., Life Alert, Comcast Corporation, Time Warner, Inc., AT&T Inc., Verizon Communications, Inc., DISH Network Corp., DIRECTV, Pinnacle, JAB Wireless, Inc., Clearwire Corporation, CenturyLink, Inc., Cox Communication, Inc. and any of their respective Affiliates and current or future dealers, and Sungevity, Inc., RPS, Sunrun Inc., Solar City Corporation, Clean Power Finance, SunPower Corporation, Corbin Solar Solutions LLC, Galkos Construction, Inc., Zing Solar, Terrawatt, Inc., and any of their respective Affiliates or current or future dealers.

(vi) Notwithstanding the foregoing, if Executive's principal place of employment is located in California, then the provisions of Sections 1(a)(i) and 1(a)(ii) of this Appendix A shall not apply following Executive's termination of employment to the extent any such provision is prohibited by applicable California law.

(b) During the Employment Term and the three-year period beginning immediately following the Employment Term, the Participant agrees not to make, or cause any other person to make, any communication that is intended to criticize or disparage, or has the effect of criticizing or disparaging, the Company or any of its affiliates, agents or advisors (or any of its or their respective employees, officers or directors (it being understood that comments made in the Participant's good faith performance of his duties hereunder shall not be deemed disparaging or defamatory for purposes of this Agreement). Nothing set forth herein shall be interpreted to prohibit the Participant from responding truthfully to incorrect public statements, making truthful statements when required by law, subpoena or court order and/or from responding to any inquiry by any regulatory or investigatory organization.

(c) It is expressly understood and agreed that although the Participant and the Company consider the restrictions contained in this Section 1 to be reasonable, if a final judicial determination is made by a court of competent jurisdiction that the time or territory or any other restriction contained in this Appendix A is an unenforceable restriction against the Participant, the provisions of this Appendix A shall not be rendered void but shall be deemed amended to apply as to such maximum time and territory and to such maximum extent as such court may judicially determine or indicate to be enforceable. Alternatively, if any court of competent jurisdiction finds that any restriction contained in this Appendix A is unenforceable, and such restriction cannot be amended so as to make it enforceable, such finding shall not affect the enforceability of any of the other restrictions contained herein.

(d) The period of time during which the provisions of this Section 1 shall be in effect shall be extended by the length of time during which the Participant is in breach of the terms hereof as determined by any court of competent jurisdiction on the Company's application for injunctive relief.

(e) The provisions of Section 1 hereof shall survive the termination of the Participant's employment for any reason.

2. Confidentiality: Intellectual Property.

(a) Confidentiality.

(i) The Participant will not at any time (whether during or after the Participant's employment with the Company) (x) retain or use for the benefit, purposes or account of the Participant or any other Person; or (y) disclose, divulge, reveal, communicate, share, transfer or provide access to any Person outside the Company (other than the Participant's professional advisers who are bound by confidentiality obligations or otherwise in performance of the Participant's duties under the Participant's employment and pursuant to customary industry practice), any non-public, proprietary or confidential information --including without limitation trade secrets, know-how, research and development, software, databases, inventions, processes, formulae, technology, designs and other intellectual property, information concerning finances, investments, profits, pricing, costs, products, services, vendors, customers, clients, partners, investors, personnel, compensation, recruiting, training, advertising, sales, marketing, promotions, government and regulatory activities and approvals -- concerning the past, current or

future business, activities and operations of the Company, its Affiliates or Subsidiaries and/or any third party that has disclosed or provided any of same to the Company on a confidential basis (“Confidential Information”) without the prior written authorization of the Board.

(ii) “Confidential Information” shall not include any information that is (a) generally known to the industry or the public other than as a result of the Participant’s breach of this covenant; (b) made legitimately available to the Participant by a third party without breach of any confidentiality obligation of which the Participant has knowledge; or (c) required by law to be disclosed; provided that with respect to subsection (c) the Participant shall give prompt written notice to the Company of such requirement, disclose no more information than is so required, and reasonably cooperate with any attempts by the Company to obtain a protective order or similar treatment.

(iii) Except as required by law, the Participant will not disclose to anyone, other than the Participant’s family (it being understood that, in this Agreement, the term “family” refers to the Participant, the Participant’s spouse, children, parents and spouse’s parents) and advisors, the existence or contents of this Agreement; provided that the Participant may disclose to any prospective future employer the provisions of this Appendix A. This Section 2(a)(iii) shall terminate if the Company publicly discloses a copy of this Agreement (or, if the Company publicly discloses summaries or excerpts of this Agreement, to the extent so disclosed).

(iv) Upon termination of the Participant’s employment with the Company for any reason, the Participant shall (x) cease and not thereafter commence use of any Confidential Information or intellectual property (including without limitation, any patent, invention, copyright, trade secret, trademark, trade name, logo, domain name or other source indicator) owned or used by the Company, its Subsidiaries or Affiliates; and

(y) immediately destroy, delete, or return to the Company, at the Company’s option, all originals and copies in any form or medium (including memoranda, books, papers, plans, computer files, letters and other data) in the Participant’s possession or control (including any of the foregoing stored or located in the Participant’s office, home, laptop or other computer, whether or not Company property) that contain Confidential Information, except that the Participant may retain only those portions of any personal notes, notebooks and diaries that do not contain any Confidential Information.

(b) Intellectual Property.

(i) If the Participant creates, invents, designs, develops, contributes to or improves any works of authorship, inventions, intellectual property, materials, documents or other work product (including without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content, or audiovisual materials) (“Works”), either alone or with third parties, at any time during the Participant’s employment by the Company and within the scope of such employment and/or with the use of any the Company resources (“Company Works”), the Participant shall promptly and fully disclose same to the Company and hereby irrevocably assigns, transfers and conveys, to the maximum extent permitted by applicable law, all of the

Participant's right, title, and interest therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition, other intellectual property laws, and related laws) to the Company to the extent ownership of any such rights does not vest originally in the Company. If the Participant creates any written records (in the form of notes, sketches, drawings, or any other tangible form or media) of any Company Works, the Participant will keep and maintain same. The records will be available to and remain the sole property and intellectual property of the Company at all times.

(ii) The Participant shall take all requested actions and execute all requested documents (including any licenses or assignments required by a government contract) at the Company's expense (but without further remuneration) to assist the Company in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company's rights in the Company Works.

(iii) The Participant shall not improperly use for the benefit of, bring to any premises of, divulge, disclose, communicate, reveal, transfer or provide access to, or share with the Company any confidential, proprietary or non-public information or intellectual property relating to a former employer or other third party without the prior written permission of such third party. The Participant shall comply with all relevant policies and guidelines of the Company that are from time to time previously disclosed to the Participant, including regarding the protection of Confidential Information and intellectual property and potential conflicts of interest.

(iv) The provisions of Section 2 hereof shall survive the termination of the Participant's employment for any reason.

**Exhibit A**

**V Solar Holdings, Inc. 2013 Omnibus Incentive Plan**

(Distributed Separately)

001366-0005-13471-Active.14089300.1 001366-0005-13471-Active.14089300.1

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**Exhibit B Shareholders  
Agreement** (Distributed Separately)

001366-0005-13471-Active.14089300.1 001366-0005-13471-Active.14089300.1

I, Gregory S. Butterfield, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Vivint Solar, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2014

/s/ Gregory S. Butterfield

Gregory S. Butterfield  
Chief Executive Officer and President  
(Principal Executive Officer)

I, Dana C. Russell certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Vivint Solar, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2014

/s/ Dana C. Russell

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Dana C. Russell  
Chief Financial Officer and Executive Vice President  
(Principal Financial Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Gregory S. Butterfield, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Vivint Solar, Inc. for the quarterly period ended September 30, 2014 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Vivint Solar, Inc.

November 12, 2014.

/s/ Gregory S. Butterfield

Gregory S. Butterfield  
Chief Executive Officer and President

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Dana C. Russell, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Vivint Solar, Inc. for the quarterly period ended September 30, 2014 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Vivint Solar, Inc.

November 12, 2014.

/s/ Dana C. Russell

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Dana C. Russell

Chief Financial Officer and Executive Vice President