

ENERGY SERVICES AGREEMENT

This Energy Services Agreement (this “Agreement”) is entered into as of _____ (the “Effective Date”) between _____, a _____ (“Customer”) and Nextility, Inc., a Delaware Corporation (“Nextility”). Customer and Nextility are collectively referred to in this Agreement as “Parties” and each individually as a “Party.”

1. Services Provided by Nextility.

A. Installing System.

(1) At Nextility’s sole expense, Nextility shall design, procure, install, and test System capable of delivering solar generated electricity (collectively, “Solar Energy”), all in accordance with this Agreement. “System” means the solar photovoltaic system, consisting of solar energy collectors, associated wiring, racking and inverters (“Solar PV Array. The System will also include certain utility-grade meters, thermometers and other sensors (such meters and sensors, the “Meter”) necessary to ensure that the System is functioning properly and to monitor and measure the Solar Energy production delivered to Customer at the Delivery Point.

(2) To the extent that any additional terms and conditions are required for the design, procurement, installation and testing of a Solar PV Array, such terms and conditions shall be set forth in the Schedule PV to this Agreement.

B. Operating and Maintaining System.

(1) At Nextility’s sole expense, Nextility shall monitor, operate, maintain and repair the System so as to reasonably maximize its output of Solar Energy (the “System Operations”). As part of the System Operations, Nextility shall also: (1) regularly inspect System, performing inspections no less than one (1) time per year to confirm the level of operability, performance utilization and efficiency consistent with design expectations, (2) provide and install replacement parts and components promptly, as necessary to ensure proper production and delivery of Solar Energy, and as part of a preventative maintenance program, at no charge to Customer, (3) ensure that its agents, employees, invitees and visitors do not create any unnecessary nuisance, or substantially interfere with the business operations of any other person, tenant, unit owners or others in the Building or Customer in its use of the Building (including the Property), and (4) ensure that the monitoring equipment component of the System, including but not limited to, the meters and sensors, will fairly and accurately collect and report the information necessary to calculate the Solar Energy Fees set forth in Section 2 and that such equipment meets or exceeds applicable certification standards.

(2) All System Operations provided under this Agreement shall be performed in a competent and professional fashion in accordance with the applicable standards of the profession and in a timely manner. Customer acknowledges and understands that the System consists of intermittent generation facilities, and that Solar Energy will not provide Customer with an uninterrupted supply of Solar Energy to the Building. Nextility provides no warranty or guarantee to Customer with respect to the supply of Solar Energy. If delivery of Solar Energy from the System is interrupted, Nextility will undertake commercially reasonable efforts to restore delivery of the Solar Energy in a timely manner.

(3) To the extent that any additional terms and conditions are required for the operations and maintenance of a Solar PV Array, such terms and conditions shall be set forth in the Schedule PV to this Agreement.

2. Payments by Customer.

A. Solar Energy Fee. Customer shall pay a monthly “Solar Energy Fee” for all Solar Energy produced by the System. The Solar Energy Fee shall be calculated in accordance with Section 2.B. Neither Party shall seek to change any of the rates or terms of this Agreement by making a filing or application with any local, state or federal agency with jurisdiction over such rates or terms or exercise any rights a Party may have, if any, to seek changes to such rates or terms during the Term of this Agreement.

B. Purchase and Sale of Energy. Following the Commercial Operation Date of the System, Nextility shall make available to Customer, and Customer shall take delivery of all of the Solar Energy produced by the Solar PV Array. Title to and risk of loss of the Solar Energy will pass from Nextility to Customer at the Delivery Point free and clear of all liens, security interests, claims and other encumbrances.

Customer shall pay a monthly “Solar Energy Fee” that is equal to the total solar generated electricity delivered during a month to the Delivery Point from the Solar PV Array times the Per kWh Rate.

“Per kWh Rate” means \$<Proposal_Nextility_Rate>/kWh, escalating at the rate of <PPA_Rate_Escalator>% on each anniversary of the Commercial Operation Date.

The Parties recognize and acknowledge that, from time to time, (a) the Solar Energy delivered to Customer may exceed Customer’s demand for electricity or (b) Customer will otherwise be unable to consume Solar Energy delivered to the Delivery Point. Customer shall nonetheless accept, purchase and take title to the Solar Energy at the Delivery Point and shall have in place and maintain net metering arrangements as required by Applicable Law or by the EDC to deliver to the EDC any Solar Energy that exceeds Customer’s demand for, or ability to consume, Solar Energy.

The Parties further acknowledge that it is possible that, from time to time, (a) the Solar Energy delivered to Customer may exceed Customer’s demand for electricity or (b) Customer will otherwise be unable to consume Solar Energy produced; provided, however, that unless due to a Customer Default, Customer shall not be obligated to pay, and Nextility shall waive, the Solar Energy Fee on any Solar Energy that is produced by the PV Solar Array that Customer is unable to consume at the Building and that does not qualify as a credit under the applicable Net Metering Arrangements to be used against future Energy Provider(s) charges. In the case that customer makes changes to the occupancy or building systems that reduce the total annual energy consumption below 71% of the total annual energy consumption in the year leading up to the commissioning of the solar PV system, then Customer shall be obligated to pay for any unused energy up to the quantity of 71% of the total annual energy consumption in the year leading up to the commissioning of the solar PV system. Customer shall accept and take title to all Solar Energy produced and shall have in place and maintain Net Metering Arrangements as required by Applicable Law or by the EDC to deliver to the EDC any Solar Energy that exceeds Customer’s demand for, or ability to consume, Solar Energy.

C. Net Metering Arrangements.

Nextility shall provide Customer with timely notification that Customer must make net metering arrangements with the EDC (“Net Metering Arrangements”) for Nextility to be able to complete the installation and testing of the System. As soon as practicable after such notification from Nextility, Customer shall enter into Net Metering Arrangements by executing such agreements as may be required by EDC to permit the interconnection of the System with the EDC and to allow any Solar Energy from the System not consumed by the Customer to flow to the EDC. Customer shall promptly provide copies of such agreements and arrangements to Nextility when executed.

D. Invoice and Payment. Customer shall pay to Nextility the Solar Energy Fee on a monthly basis, from the Commercial Operation Date through to the end of the Term. Nextility shall deliver a monthly invoice (the “Invoice”) setting forth the Solar Energy Fee for all Solar Energy delivered in the previous calendar month, including each aggregate or average quantity used in the equations set forth in Schedule PV and/or Schedule TS, in addition to any other payments owed under this Agreement. Upon Customer’s request, Nextility shall also provide the raw data, in CSV format, as recorded by Nextility’s Meter. Customer shall pay the Solar Energy Fee on or before the thirtieth (30th) day following Customer’s receipt of such Invoice (the “Due Date”). Any amounts not received by the Due Date shall accrue interest at an annual rate of one percent (1%) plus the prime rate published in The Wall Street Journal on the Due Date (the “Interest Rate”) calculated from the Due Date through the date actually paid.

E. Time for Review. If Customer reasonably and in good faith disputes any invoice or any portion thereof, Customer shall give Nextility notice of such dispute within sixty (60) days after receipt of such invoice, including reasonable documentation. If Customer fails to dispute an invoice within such sixty (60) day period, Customer shall be deemed to have accepted such invoice in full. Upon receipt by Nextility of a timely dispute notice, the Parties shall meet and attempt to resolve such dispute amicably. Upon resolution of any disputed amount, the agreed-upon amount shall be paid within fifteen (15) days after resolution of the dispute. Customer shall not be deemed to be in default of this Agreement by reason of withholding payment with respect to any portion of an invoice disputed reasonably and in good faith; provided, if such dispute is resolved in Nextility’s favor, Customer shall pay interest (as provided in Section 2D) on such unpaid amounts dating back to the Due Date set forth in the applicable invoice.

3. Grant of License.

A. Unless the Parties have entered into a separate lease agreement applicable to the Site (in which case the provisions of such lease agreement will supersede any inconsistent provisions in this Section 3), Customer grants to Nextility a non-exclusive license (the “License”) to use the Site solely for the installation, operation, maintenance, monitoring, modification and removal of the System, in accordance with this Agreement, from the Effective Date through the end of the Term and for sixty (60) days thereafter. Customer represents and warrants that it is the owner of the Property and/or is a lessee of the Property, and in either case has full authority to grant the License herein, and no other person or entity has a legal right to prevent installation or operation of the System on the Site. If Customer is a lessee of the Property, Customer (i) shall at its sole cost and expense, obtain the consent, if necessary, of the owner of the Property, to the

Customer's execution and delivery of this Agreement, and (ii) shall provide a copy of the lease agreement to Nextility.

B. Customer shall not alter, and shall not cause or permit any interference with (including any activities causing any increase in levels of dust or accumulations of dust), the System's insolation and access to sunlight as such access exists as of the Effective Date. At all times during the Term, Customer shall ensure that shading of the System's solar arrays does not exceed the shading as it exists on the Effective Date. Customer represents to Nextility that there are no circumstances known to Customer and no commitments to third parties that may damage, impair, or otherwise adversely affect the System or their function by blocking sunlight to, or reducing the insolation at, the System.

C. If a fire or other casualty affects the Site, Customer shall promptly notify Nextility.

4. Development, Design, and Installation.

A. Development by Nextility. Following the Effective Date of this Agreement, Nextility shall use its commercially reasonable efforts to: (i) apply for and obtain all Energy Provider and Governmental Approvals necessary to install and operate the System; (ii) perform a structural engineering analysis of the Building's roof and surrounding areas to determine whether the Building is suitable for installation of a Solar PV Array; and (iii) retain and hire a qualified installer(s) of Solar PV Arrays (the "Installer") to install the System in the appropriate timeframe (each of (i) through (iii), a "Development Task").

B. Initial Design and Final Design. Upon completion of the Development Tasks, Nextility shall deliver to Customer a design setting forth a general description of the System, including the site plan, system design, easements, equipment specifications, equipment location, metering equipment, roof modifications, if any, and integration of the System with the Building's existing fixtures (the "Initial Design"). Customer shall have fifteen (15) days to review or request modifications of the Initial Design; provided, however, if Customer does not request modifications to the Initial Design within such fifteen (15) day period, then Customer shall be deemed to have approved such Initial Design. If Customer does request modifications to the Initial Design, then the Parties shall cooperate in good faith to modify the Initial Design to both Parties' satisfaction. Upon Customer's written approval (or deemed approval), the Initial Design shall be deemed final and binding on both Parties (the "Final Design"). If Customer and Nextility are unable to agree on the Final Design within ninety (90) days of delivery of the Initial Design by Nextility, either Party may terminate this Agreement by written notice to the other Party, and neither Party shall have any further obligations under this Agreement.

C. Commencement of Installation. Upon Customer's written approval of the Final Design, Nextility and its Installer shall commence installation and construction of the System, unless Nextility has determined that (i) the Building is structurally insufficient to hold the System, (ii) the Energy Provider and Governmental Approvals cannot be obtained through commercially reasonable efforts (iii) the cost of installing and operating the System, based on Nextility's analysis of the Building and the proposed System, is not commercially viable. Upon Nextility's determination as set forth in clauses (i), (ii) or (iii), Nextility may terminate this Agreement upon written notice to Customer, and neither Party shall have any further obligations hereunder.

D. Customer Change Orders. If, after Customer's approval of the Final Design, Customer requests any work, equipment, or design element that deviates from the Final Design (a "Change Order"), Customer shall so notify Nextility in writing. Nextility shall have no obligation to execute such Change Order, but shall work in good faith with its Installer to accommodate the Change Order; provided, that Customer shall pay for any additional cost or expense arising from such Change Order within thirty (30) days of receipt of the Invoice from Nextility and provided further such Change Order if implemented will, in the reasonable opinion of Nextility, have no adverse effect on the performance, production, revenues or operation of the System. No Change Orders shall be submitted by Customer after Commercial Operation. Any such amount not paid when due shall accrue interest at the Interest Rate calculated from such due date through the date actually paid.

E. Temporary Removal of System Requested by Customer. If Customer needs to temporarily remove or relocate the System (or any material portion thereof) to perform routine or necessary maintenance to the Building that impacts Nextility's use of the Site hereunder, then (i) Customer shall pay any and all costs incurred by Nextility in the relocation or removal of the affected System to and from the temporary location, if any, given the circumstances and timing of the relocation, and (ii) any such relocation or removal shall be performed by qualified contractors selected by Nextility. Customer shall provide Nextility with at least sixty (60) days prior written notice of its intent to have Nextility temporarily relocate or remove the affected System. In the event that a temporary relocation or removal is for longer than five (5) days or if there have already been at least two (2) relocations or removals during the Term, Customer shall, within thirty (30) days of an invoice therefor, pay Nextility for any lost revenue for Solar Energy and lost Environmental Attributes during the period that the System was unable to operate, which amount Nextility shall calculate in a commercially reasonable fashion using historic operating data to the extent applicable.

5. Term.

A. The initial term of this Agreement will begin on the Effective Date of this Agreement and will continue for the number of years listed in the List of Systems table on the signature page following the Commercial Operation Date (the "Initial Term"), unless and until earlier terminated pursuant to the provisions of this Agreement. Upon written notice from Customer at least thirty (30) days prior to the end of the Term, the Parties may by mutual consent renew this Agreement for two (2) periods of five (5) years each (a "Renewal Term"). The Initial Term and Renewal Term, if any, shall be referred to collectively as the "Term."

B. Nextility shall notify Customer of the date the commissioning document is received from Nextility's Installer, indicating that installation is complete and that the System is ready for regular, daily operation, and is capable of producing Solar Energy (the "Commercial Operation Date"); provided, that for Solar PV Arrays, Nextility must also notify Customer that the Solar PV Array has been interconnected and synchronized to the EDC's electrical system.

C. Customer may terminate its obligation to make payments under Section 2 of this Agreement for any reason at any time after ninety (90) days following the fifth (5th) anniversary of the Commercial Operation Date (the "Early Termination Date") upon ninety (90) days prior written notice to Nextility and payment to Nextility of an "Early Termination Fee" equal to the sum of:

(1) the product of (a) the average amount of the monthly Solar Energy Fees for the most recent twelve (12) month period preceding the Early Termination Date, payable to Nextility in accordance with Section 2.D and (b) the number of months remaining in the Term; and

(2) the product of (a) the average monthly value of Environmental Attribute Revenue, if applicable, for the twelve (12) month period preceding the Early Termination Date and (b) the number of months remaining in the Term; and

(3) costs incurred in connection with the termination of this agreement, including, without limitation, costs to remove the System.

D. Payment of the Early Termination Fee shall not constitute the purchase of the System by Customer. However, in addition to receiving the Early Termination Fee, Nextility may, in its sole discretion, offer to Customer the option to purchase the System for the Option Price, in accordance with Section 6.

6. Purchase Option.

A. Customer's Right to Purchase. Provided no Customer Default shall have occurred and be continuing, Customer shall have the right to purchase the System at the expiration of the Term, by notifying Nextility in writing at least one-hundred and twenty (120) days prior thereto.

B. Purchase Option Price. The purchase price for the System to be paid by the Customer to Nextility shall be the Fair Market Value, as determined in accordance with this Section 6C (the "Purchase Option Price"). If the Parties cannot mutually agree on its Fair Market Value within ten (10) days after Customer's notice to Nextility, the Parties shall select, at the Parties' equally shared expense, a nationally recognized independent appraiser with experience and expertise in the solar industry. Customer's right to purchase the System under Section 6A shall be conditioned on Customer sharing equally in the cost of such appraisal. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error; provided, that Customer may rescind (by irrevocable notice to Nextility) its offer to exercise the Purchase Option within ten (10) days following receipt of such appraisal. The appraisal report must be USPAP compliant and meet all applicable AICPA guidelines for the appraisal of assets. "Fair Market Value" means, with respect to the System, as of the day of determination, the price that would be negotiated in an arms' length, free market transaction for cash, between an informed, willing seller and an informed, willing buyer unrelated to seller, neither of whom is under compulsion to complete the transaction. For purposes of this definition, the cost of removal of the System from the Building shall be deducted in determining the Fair Market Value.

C. Closing and Costs. In the event Customer exercises the purchase option, the Parties shall, within thirty (30) days of the determination of the Purchase Option Price (the "Purchase Closing Date"), (i) prepare all documents necessary to cause title to the System, along with any then-existing warranties and maintenance, operations or supply contracts that Customer may request, to pass to Customer, with execution of such documents occurring on or before the end of the applicable Term, and (ii) Customer shall pay the Purchase Option Price to Nextility in immediately available funds. Customer's purchase of the System under this Section 6 shall be

subject to the warranty disclaimer set forth in Section 1212.B below. Customer acknowledges that Nextility shall have no obligation to repair, replace, or otherwise maintain or remove the System after the Purchase Closing Date.

7. Removal of System.

A. Within sixty (60) days after the expiration of the Term or early termination of this Agreement, provided that Customer is not purchasing the System at the Purchase Option Price pursuant to Section 6, Nextility shall, upon reasonable advance notice to Customer, remove at its own cost and expense (the "Removal Costs") the System from the Building and repair any damage caused in connection therewith, reasonable wear and tear excepted; provided that Nextility shall not be required to remove internal wiring or piping within the Building, and anchoring points or protrusions less than two (2) feet above the roof.

8. Ownership of System and Attributes.

A. Tax Attributes. Nextility or the legal owner of the System shall be the owner of any Tax Attributes that may arise as a result of the operation of the System and shall be entitled to transfer such Tax Attributes to any person. Customer shall provide reasonable assistance to Nextility in preparing all documents necessary for Nextility or the legal owner to receive such Tax Attributes, and if Customer is deemed to be the owner of any such Tax Attributes, Customer shall assign and execute such documents as requested by Nextility (or the proceeds thereof) to Nextility or the legal owner of the System.

B. Environmental Attributes. Nextility shall be the owner of any Environmental Attributes that may arise as a result of the operation of the System and shall be entitled to transfer such Environmental Attributes to any person. Customer shall provide reasonable assistance to Nextility in preparing all documents necessary for Nextility to receive such Environmental Attributes, and if Customer is deemed to be the owner of any such Environmental Attributes, Customer shall assign the same (or the proceeds thereof) and execute such documents as requested by Nextility. If Customer receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Nextility.

C. Capacity and Ancillary Services. Nextility shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the Solar PV Array. Customer shall provide reasonable assistance to Nextility in preparing all documents necessary for Nextility to receive such payments, and if Customer is deemed to be the owner of any such capacity or ancillary services, Customer shall assign the same (or the proceeds thereof) and execute such documents as requested by Nextility. If Customer receives any payments in respect of such capacity or ancillary, it shall promptly pay them over to Nextility.

D. Other Incentives and Attributes. Nextility shall be the owner of and entitled to any other benefits, grants or incentives that may arise as a result of the ownership or operation of the System, including state solar initiative programs, low-income bill relief programs, energy efficiency programs and any other federal or state specific benefit, grant or incentive programs. Customer shall provide reasonable assistance to Nextility in preparing all documents necessary for Nextility or the legal owner to receive such additional incentives and attributes, and if Customer is deemed to be the owner of any such incentives or attributes, Customer shall assign

and execute such documents as requested by Nextility (or the proceeds thereof) to Nextility or the legal owner of the System.

9. Defaults and Remedies.

A. Nextility Defaults. The occurrence of any of the following shall be considered a “Nextility Default”:

(1) Nextility breaches any obligation under this Agreement and such breach continues un-remedied for a period of thirty (30) days following written notice thereof; provided, that if such breach cannot be remedied within such thirty (30) day period, and Nextility diligently commences and prosecutes such cure, Nextility shall be afforded an additional sixty (60) days in which to cure such breach; or

(2) Nextility (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its assets; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) any petition is filed against Nextility in an involuntary case under bankruptcy law or seeking to dissolve Nextility under other Applicable Law and such petition is not dismissed within thirty (30) days of such filing; or (G) takes any action authorizing its dissolution.

B. Customer Defaults. The occurrence of any of the following shall be considered a “Customer Default”:

(1) Any representation or warranty by Customer is incorrect in any material respect, and such defect is not cured within thirty (30) days after receipt of written notice from Nextility; provided, that if such breach cannot be remedied within such thirty (30) day period, and Customer diligently commences and prosecutes such cure, Customer shall be afforded an additional sixty (60) days in which to cure such breach;

(2) Customer breaches any obligation under this Agreement and such breach continues un-remedied for a period of thirty (30) days following written notice thereof; provided, that if such breach cannot be remedied within such thirty (30) day period, and Customer diligently commences and prosecutes such cure, Customer shall be afforded an additional sixty (60) days in which to cure such breach;

(3) Customer fails to pay any amount within fifteen (15) days after such amount is due;

(4) Customer (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) any petition is filed against Customer in an involuntary case under

bankruptcy law or seeking to dissolve Customer under other Applicable Law and such petition is not dismissed within thirty (30) days of such filing; or (G) takes any action authorizing its dissolution.

- (5) Customer assigns this Agreement in violation of Section 16.H; or
- (6) Customer sells the Building without assigning this Agreement.

C. Remedies for Nextility Default and Customer Default. If at any time a Nextility Default or a Customer Default has occurred and is continuing, the other Party (the “Non-Defaulting Party”) will, without (except as otherwise provided in Section 9D) limiting the rights or remedies available to the Non-Defaulting Party under this Agreement or Applicable Law, have the right:

- (1) by notice to the Defaulting Party, to designate a date, not earlier than the date such notice is effective and not later than thirty (30) days after the date such notice is effective, as an early termination date (“Early Termination Date”) in respect of this Agreement; provided however, Nextility may continue its License hereunder if it shall be the Non-Defaulting Party;
- (2) if the Customer is the Defaulting Party, Nextility may continue its License hereunder, and generate revenue from the sale of Environmental Attributes and/or the sale of Solar Energy to a third party (if Nextility is permitted to do so under Applicable Law);
- (3) to withhold any payments due to the Defaulting Party under this Agreement; and
- (4) to suspend performance due to the Defaulting Party under this Agreement.

In the event that the Non-Defaulting Party designates an Early Termination Date, this Agreement will terminate as of the Early Termination Date; provided however, if Nextility exercises its rights under Section 9C(2), the License shall continue and Nextility shall not be required to remove its System from the Site.

D. Customer Rights On Termination for Nextility’s Default. In the event that Customer is the Non-Defaulting Party, and that Customer elects to terminate this Agreement as provided in Section 9C, Customer will be entitled, in its sole and absolute discretion, either to:

- (1) require that Nextility remove the System (or to remove and have stored the System at Nextility’s sole cost and expense if Nextility fails to remove the System within sixty (60) calendar days after the Early Termination Date); or
- (2) exercise the Purchase Option provided in Section 6.

Customer’s election of either remedy provided in this Section 9D does not prevent Customer from seeking any damages and remedies at law or in equity.

E. Nextility Rights On Termination for Customer’s Default; Liquidated Damages.

(1) If, after Customer’s approval of the Final Design and before the Commercial Operation Date, a Customer Default occurs, Customer shall be liable to Nextility for

(a) all costs and expenses incurred by Nextility prior to such date arising from its Development Tasks and (b) Nextility's Installer's costs and expenses for the System.

(2) On and after the Commercial Operation Date, in the event that Nextility is the Non-Defaulting Party, and Nextility elects to terminate this Agreement as provided in Section 9C, Nextility will be entitled to all damages and remedies, at law or equity provided by the laws of the State of Delaware; provided, that in the event of any termination by Nextility pursuant to this Section 9E, Customer shall pay to Nextility, as liquidated damages and not as a penalty, the sum of (a) the product of (i) the average amount of the monthly Solar Energy Fees for the twelve (12) month period preceding the date of Nextility's termination, payable to Nextility and (ii) the number of months remaining in the Term; and (b) the product of (i) the average monthly value of Environmental Attribute revenue, if applicable, for the twelve (12) month period preceding the date of Nextility's termination, and (ii) the number of months remaining in the Term; and (c) if such termination occurs less than five (5) years and ninety (90) days after the Commercial Operation Date, the amount lost or owed by Nextility as a claw back, lost rebate, or repayment with respect to the corresponding Environmental and/or Tax Attributes, including without limitation, depreciation deductions, state rebates, investment tax credits, including penalties and interest thereon. Customer acknowledges and agrees that (a) the production of Solar Energy output by the System during the Initial Term and the purchase by Customer of all such Solar Energy output during the Initial Term are essential to the success of Nextility, in particular to prevent recapture or other prejudice to any Environmental or Tax Attributes intended to be received by Nextility hereunder, and that (b) the amount calculated pursuant to this Section for the Initial Term is therefore appropriate and justified. To the extent applicable, Customer shall be responsible for the costs and expenses of System removal.

(3) Customer further acknowledges and agrees that if Customer during the Initial Term (i) terminates, gives notice to Nextility that it is terminating, threatens to terminate, or takes any other actions in support of terminating or attempting to terminate, this Agreement, (ii) causes any portion of the System to shut down and cease production and delivery of Solar Energy output due to Customer's alteration of the load configuration on the Meter for any portion of the System without the prior written consent of Nextility or as permitted by this Agreement, (iii) removes any portion of the System from the Site without the prior written consent of Nextility or (iv) refuses to take delivery of any of the Solar Energy output produced by the System, Nextility shall be entitled to reimbursement of and to recover from Customer all reasonable attorneys' fees and costs, whether or not suit is filed in enforcing or attempting to enforce this Agreement. All remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies available to Nextility for any breach of this Agreement.

F. Closeout Setoffs. Either Party will be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the other Party under this Agreement, any amounts due and owing from the other Party under this Agreement.

G. Remedies Cumulative. Except as provided in Sections 9D and 9E, the rights and remedies contained in this Section 9 are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

H. Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises anyone or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

10. Customer Covenants.

Customer shall at all times during the Term of this Agreement:

A. not damage, modify, adjust, tamper with, or otherwise interfere with the proper operation of the System or its insulation and access to sunlight; to the extent Customer's breach of such obligation reduces the Solar Energy production of the System or its measurement, Nextility may adjust the Solar Energy Fees accordingly, upon written notice to Customer;

B. promptly notify Nextility of any damage to or interference with the System that could reasonably be expected to adversely affect the System;

C. supply utilities to the System;

D. provide access to the Property, the Building and the Site for Nextility and its agents at all reasonable times (including under emergency conditions) for the purposes of installation, operation and maintenance of the System;

E. not cause or allow any liens on the System; Customer shall promptly notify Nextility in writing of any breach of this obligation, and cause such lien to be discharged and released;

F. provide Nextility with access to internet or telephone connections to allow Nextility to access the System for monitoring purposes; if Customer cannot supply Nextility with access to internet or telephone connections, an amount not to exceed thirty dollars (\$30) worth of Solar Energy will be added to Customer's Invoice for each such month to cover the cost to Nextility for cellular internet connections.

11. Nextility Covenants.

Nextility shall at all times during this Term of this Agreement:

A. maintain, operate, monitor, and repair the System to ensure the proper production and delivery of Solar Energy to Customer's Building, including checking the accuracy of the Meter, and including, upon Customer request, a site visit within the final thirty (30) days of the Term for purposes of this Section 11A;

B. ensure that the System does not materially damage the Building, void the Customer's roof warranty (if any), or pose any material danger to Building workers or residents;

C. avoid any activities that would cause excessive noise or any other objectionable conditions within the Building or in the surrounding neighborhood;

D. comply with all reasonable security measures employed by the Customer with respect to the Building;

E. carry: (i) comprehensive general liability insurance with coverage of at least one-million dollars (\$1,000,000) per occurrence and two-million dollars (\$2,000,000) annual aggregate; (ii) excess liability insurance with coverage of at least one-million dollars (\$1,000,000); and (iii) worker's compensation insurance as required by law; provided, that Nextility and its contractors shall not be obligated to carry such insurance prior to the commencement of work on the construction and installation of the System. The comprehensive general liability policy shall include property damage to the extent that loss is caused by the negligence of Nextility or its agents or contractors for Customer's real and personal property. All policies shall contain a provision whereby the insurer agrees to give Customer thirty (30) days' written notice before the insurance is cancelled, terminated or materially altered. Nextility shall provide evidence of all such insurance to Customer upon request.

12. Liability.

A. Limitation of Liability.

(1) EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, NO PARTY OR ITS AFFILIATES SHALL BE LIABLE OR HAVE ANY RESPONSIBILITY TO ANY OTHER PARTY OR THEIR RESPECTIVE AFFILIATES UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOST EARNINGS OR PROFITS. THE LIMITATIONS ON LIABILITY CONTAINED IN THIS SECTION SHALL APPLY TO ANY CLAIM OR ACTION, WHETHER IT IS BASED IN WHOLE OR IN PART ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, STATUTE, OR ANY OTHER THEORY OF LIABILITY.

(2) Each Party's aggregate liability with respect to claims for personal injury or damage to real or personal property arising with respect to this Agreement, whether in contract, tort or otherwise, shall in no event exceed one-million dollars (\$1,000,000) in the aggregate.

B. Warranty Disclaimer. Except as expressly set forth in this Agreement, the System and System Operations provided by Nextility herein, including upon and after Customer's purchase of the System under Section 6 above, shall be "as is" and "where is." No other warranty to Customer or any other person, whether express, implied or statutory, is made as to the installation, design, description, quality, merchantability, non-infringement, completeness, useful life, future economic viability, or fitness for a particular purpose of the System or System Operations or any other matter, all of which are expressly disclaimed by Nextility.

13. Indemnification.

A. Mutual Indemnity. Each Party shall indemnify, defend, and hold harmless the other Party (including its respective permitted successors and assigns) and such other Party's subsidiaries, directors, officers, members and employees (collectively, "Indemnitees") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by such Indemnitees arising from or relating to (i) such Party's breach of any of its obligations, representations or warranties under this Agreement, or (ii) such Party's gross negligence or willful misconduct. A Party's indemnification obligations under this

Section 13A shall not extend to any claim to the extent such claim is due to the negligence or willful misconduct of any Indemnitee.

B. Indemnity Survival. The obligations of the Parties set forth in this Section 13 shall be subject to the limitations of Section 12 and shall survive any termination of this Agreement for a period of three (3) years from the termination of this Agreement. The indemnified Party under this Section 13 shall give the indemnifying Party prompt written notice of any such damage or claim hereunder.

14. Ownership of System and Associated Products.

A. Nextility's Ownership Interests in System. Throughout the duration of this Agreement, the System shall remain the personal property of its legal owner, and not Customer, and shall not be deemed a part of, or fixture to, the Property. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Customer covenants that it will use its best efforts to place all parties having an interest in or lien upon the real property comprising the Property on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Property which could reasonably be construed as prospectively attaching to the System as a fixture of the premises, Customer shall obtain and provide to Nextility a disclaimer or release from the lienholder. Further, Customer consents to Nextility recording a memorandum of license in the land registry or title records of the county where the System is located or other applicable government office. Nextility shall be entitled to, and is hereby authorized to, file one or more precautionary financing statements or fixture filings in such jurisdictions as it deems appropriate with respect to the System in order to protect Nextility's rights in the System.

B. Customer's Real Property. Throughout the duration of this Agreement, Customer shall be the legal and beneficial owner (or if applicable, lessee) of the Property at all times, and the Property shall remain the property of Customer and shall not be deemed a part of the System. Any master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") which in the future covers all or any part of the Property, and all renewals, replacements, and extensions thereof, shall be subject and subordinate to this Agreement. In accordance with the foregoing, Customer shall cause any such mortgagee to execute, acknowledge and deliver whatever instruments may be reasonably required by Nextility for the purpose of subordinating such Mortgage to this Agreement.

C. Subordination. At Customer's option, however, this Agreement shall be subordinate to any future mortgage by Customer which from time to time may encumber all or part of the Property; provided, however, as a condition precedent to Nextility being required to subordinate its interest in this Agreement to any existing or future mortgage covering the Property, Customer shall obtain for Nextility's benefit a non-disturbance and attornment agreement in a form reasonably satisfactory to Nextility, and shall recognize Nextility's right to remain in occupancy of and have access to the System under this Agreement and the License granted hereunder, and recognize Nextility's rights to ownership of the System under this Agreement. Customer shall reimburse Nextility's reasonable legal costs and expenses incurred in connection with the negotiation and execution of a non-disturbance and attornment agreement.

15. Environmental Laws.

A. By Customer. Customer represents that there are no Hazardous Materials present on, in or under the Property in violation of any Applicable Law or regulation. Customer shall not introduce or use any Hazardous Materials on, in or under the Property in violation of any Applicable Law. If Customer becomes aware of any such Hazardous Materials on the Property, Customer shall promptly notify Nextility of the type and location of such materials in writing. Customer shall have full responsibility for (and shall protect, indemnify and defend Nextility against) any liability or cleanup obligations for any contamination or pollution or breach of Applicable Laws related to use or presence of any Hazardous Materials on, in or under the Properties that are attributable to the actions of Customer or are attributable to Hazardous Materials existing on the Property that were not introduced by Nextility. This indemnification requirement shall survive the termination of this Agreement.

B. By Nextility. Nextility shall not introduce or use any Hazardous Materials on, in or under the Property in violation of any Applicable Law. If Nextility becomes aware of any such Hazardous Materials on the Property introduced by Nextility, Nextility shall notify Customer of the type and location of such materials in writing. Nextility shall have full responsibility for (and shall protect, indemnify and defend Customer against) any liability or cleanup obligations for any contamination or pollution or breach of Applicable Laws related to use or presence of any Hazardous Materials on, in or under the Property that are attributable to the actions of Nextility. This indemnification requirement shall survive the termination of this Agreement.

16. Miscellaneous.

A. Force Majeure. If either Party is prevented from performing any of its obligations under this Agreement due to any cause beyond the Party's reasonable control, including, without limitation, an act of God, natural disaster, fire, earthquake, flood, explosion, war, terrorism, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, utilities, or acts of vandals or hackers (a "Force Majeure Event"), the time for that Party's performance will be extended for the period of the delay or inability to perform due to such occurrence; provided, that Customer will not be excused from the payment of any sums of money owed by Customer to Nextility due prior to the Force Majeure Event. Customer shall have no obligation to pay any Solar Energy Fees under the formula set forth in Section 2 during any time period in which Nextility is unable to provide service to Customer.

B. Confidential Information. Any information, including, without limitation, business plans, strategies, financial information, proprietary, patented and/or technical information regarding the design, operation and maintenance of the System, that the receiving Party knows or has reason to know (either because such information is marked or otherwise identified by the disclosing Party orally or in writing as confidential or proprietary, has commercial value, or because it is not generally known in the relevant trade or industry) is confidential information of the other Party and will remain the sole property of the disclosing Party. Each Party agrees that it will not disclose, use, modify, copy, reproduce or otherwise divulge such confidential information other than to fulfill its obligations under this Agreement. The prohibitions contained in this Section will not apply to information (a) lawfully known to or independently developed by the receiving Party, (b) disclosed in published materials, (c) generally known to the public, or (d) lawfully obtained from any third party. Neither Party will disclose to third parties, other than

its agents, employees, attorneys, consultants, lenders and representatives on a need-to-know basis, the material financial terms of this Agreement or any addenda hereto without the prior written consent of the other Party, except either Party will be entitled to disclose (i) such terms to the extent required by law or applicable legal process; and (ii) the existence of this Agreement. Nothing in this Section shall limit the ability of either Party to enforce this Agreement or to secure financing; the terms of this Agreement may be disclosed to lenders of either Party, as needed. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance.

C. Announcements. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to this Agreement. No such publicity releases or other public statements shall be made by either Party without the prior written consent of the other Party.

D. Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that: (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization; (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement; (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement; (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally; (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein; (f) it is able to generally pay its debts, has not filed for bankruptcy protection, and no creditor has filed an involuntary bankruptcy proceeding against it; and (g) its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it is a Party or by which it or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

E. Taxes. Each Party shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of its property (i.e., in the case of the Customer, the Property; in the case of Nextility, the System). To the extent that one Party is levied, assessed or pays any taxes which are the responsibility of the other Party hereunder, the Party responsible for payment of the subject tax shall reimburse or otherwise indemnify the other Party for the amount of such taxes paid.

F. Notices. Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered, three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested, or

(b) if sent by facsimile or e-mail with confirmation, upon confirmation of receipt thereof. Mailed, e-mailed and facsimile notices shall be addressed to either Party as listed on the signature page of this document.

G. Assignment. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that: (a) without consent of Customer, Nextility (i) may assign its rights and obligations hereunder to an Affiliate of Nextility, (ii) may sell or collaterally assign this Agreement to a Financing Party in connection with a financing of this System, and (iii) may finance all or a portion of the System by entering into lease financing, tax equity or other financing arrangement between Nextility and any Financing Party providing financing to Nextility for the System; and (b) with Nextility's consent, not to be unreasonably withheld or delayed, Customer may assign its rights and obligations hereunder to an Affiliate of Customer or to a purchaser of the Building; provided, such Customer assignee agrees in writing to accept and perform all obligations of Customer under this Agreement.

H. Financing. Customer acknowledges that Nextility may be financing the development, acquisition, construction, commissioning, ownership, operation and/or use of the System and Customer agrees that it shall cooperate with Nextility and the Financing Party in connection with such financing. Notwithstanding any contrary term of this Agreement:

(1) A Financing Party, as collateral assignee, shall be entitled to exercise any and all rights and remedies of Nextility under this Agreement in accordance with the terms of this Agreement. Such Financing Party shall also be entitled to exercise all rights and remedies of secured Parties generally with respect to this Agreement and the System.

(2) Nextility's Financing Party shall have the right, but not the obligation, to cure any default of Nextility thereunder in the time and manner provided by the terms of this Agreement, or such longer period if the Parties agree. Nothing herein requires such Financing Party to cure any default of Nextility under this Agreement or (unless the Financing Party has succeeded to Nextility's interests under this Agreement) to perform any act, duty or obligation of Nextility under this Agreement, but Customer hereby gives it the option to do so; provided, however, that Customer will not exercise any right to terminate this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and Financing Party shall not have caused to be cured the condition giving rise to the right of termination within the periods provided for in this Agreement. In the event that the Financing Party cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement, this Agreement shall continue in full force and effect.

(3) Upon the exercise of remedies under its security interest in the System, Financing Party, or any assignment from Nextility to such Financing Party (or any Qualified Assignee of such Financing Party) in lieu thereof, such Financing Party shall give notice to Customer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

(4) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Nextility under the United States Bankruptcy Code, at the

request of Financing Party made within ninety (90) days of such termination or rejection, Customer shall enter into a new agreement with such Financing Party or its Qualified Assignee having substantially the same terms and conditions as this Agreement.

I. Estoppel Certificate. From time to time, upon written request by either Party (or its financing provider(s)), the other Party shall provide within ten (10) days thereafter an estoppel certificate attesting, to the knowledge of the other Party, of such requesting Party's compliance with the terms of this Agreement or detailing any known issues of noncompliance. If the other Party fails to deliver such requested document to the requesting Party within such ten (10) day period, then the requesting Party may make an additional written demand for such requested document and if the other Party does not deliver the requested document within ten (10) days following such additional written demand from the requesting Party, then such failure shall constitute an event of default under this Agreement.

J. Governing Law; Venue. This Agreement will be construed in accordance with the laws of the State of Delaware, without regard to its choice-of-law rules. The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought exclusively in the United States District Court for the District of Delaware. By execution and delivery of this Agreement, each Party (for itself, its affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and waives any right it may have to assert the doctrine of forum non-conveniens or similar doctrine or to object to venue with respect to any proceedings. The Parties irrevocably consent to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, first class postage prepaid to the addresses set forth in Section 16G. The prevailing Party in any action or proceeding brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action or proceeding from the other Party.

K. WAIVER OF JURY TRIAL. EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN ANY COURT IN ANY JURISDICTION BASED UPON OR ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION OR DOCUMENT RELATED TO THIS AGREEMENT.

L. Termination Fees Not a Penalty. Customer acknowledges that the termination fees (including, without limitation payment of Early Termination Fee) provided herein constitute liquidated damages, and not penalties, in lieu of Nextility's actual damages resulting from the early termination of this Agreement. Customer further acknowledges that Nextility's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Customer's rights and obligations under this Agreement, the termination fees constitute fair and reasonable damages to be borne by Customer in lieu of Nextility's actual damages, and accordingly Nextility shall have no further rights for damages against Customer.

M. Survival. Effective as of any expiration or termination of this Agreement, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to the expiration or termination of this Agreement and (b) as provided in Sections 13 and 15.

N. PDF Execution. This Agreement may be executed and delivered in electronic portable document format (PDF).

O. Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include,” “includes,” and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof,” “herein,” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Exhibits,” “Articles” and “Sections” refer to Exhibits, Articles and Sections of this Agreement.

P. Agreement. This Agreement constitutes the entire agreement between Nextility and Customer with respect to the subject matter hereof and all prior agreements, representations, and statements with respect to such subject matter are superseded hereby. This Agreement may be changed only by written agreement signed by both Nextility and Customer. No failure of either Party to exercise or enforce any of its rights under this Agreement will act as a general waiver or a waiver of subsequent breaches and the waiver of any breach will not act as a waiver of subsequent breaches. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under Applicable Law and the other provisions of this Agreement will remain in full force and effect. The Parties further agree that in the event such provision is an essential part of this Agreement, the Parties will begin negotiations for a replacement provision. This Agreement will not be construed as creating or constituting a partnership, joint venture, or agency relationship between the Parties. Neither Party will have the power to bind the other or incur obligations on the other’s behalf without the other Party’s prior written consent. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

17. Definitions and Interpretation.

A. Defined Terms. The following terms when used in this Agreement shall have the following meanings:

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, “control” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. “Control” may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another Person.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such

Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Building” means the building(s) located upon the real property (“Property”) known by the name(s) identified in the List of Systems on the signature page and located at the address(s) listed in the List of Systems on the signature page.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Delaware are required or authorized to be closed for business.

“Change Order” is defined in Section 4.D.

“Commercial Operation Date” is defined in Section 5.

“Customer” is defined in the preamble.

“Customer Default” is defined in Section 9.B.

“Defaulting Party” means with respect to (a) a Nextility Default, Nextility, and (b) a Customer Default, the Customer.

“Delivery Point” means the agreed-upon location or locations where Solar Energy is to be delivered and received under this Agreement.

“Development Task” is defined in Section 4.A.

“Due Date” is defined in Section 2.D.

“Early Termination Date” is defined in Section 9.C(1).

“EDC” means the electric distribution company that owns the electricity distribution system in which the Building is located and provides electricity distribution services to Customer at the Building, or such successor entity providing electricity distribution services to Customer at the Building.

“Energy Provider” is defined in Schedule PV and/or Schedule TS.

“Environmental Attributes” means any renewable energy certificates, renewable energy credits, solar renewable energy credits, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the System and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes.

“Fair Market Value” is defined in Section 6.B.

“Final Design” is defined in Section 4.B.

“Financing Party” means any lender or other third party (including a tax equity monetization party or sale-leaseback provider) providing construction financing, long-term equity, lease

financing or tax equity (or debt financing or other credit support) in connection with the development, construction or operation of the System.

“Force Majeure Event” is defined in Section 16.A.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority having jurisdiction over the matter in question.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Hazardous Materials” means all substances, chemicals or wastes on the Property identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

“Indemnitees” is defined in Section 13.A.

“Initial Design” is defined in Section 4.B.

“Initial Term” is defined in Section 5.

“Installer” is defined in Section 4.A.

“Interest Rate” is defined in Section 2.D.

“Invoice” is defined in Section 2.D.

“License” is defined in Section 3.

“Meter” is defined in Section 1.A.

“Mortgage” is defined in Section 14.B.

“Net Metering Arrangements” is defined in Schedule PV.

“Non-Defaulting Party” is defined in Section 9.D.

“Party” or “Parties” is defined in the Preamble to this Agreement.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Purchase Closing Date” is defined in Section 6.C.

“Purchase Option Price” is defined in Section 6.B.

“Qualified Assignee” means be a business organization with at least two (2) years of experience in the operation, maintenance and management of commercial solar generating systems.

“Removal Costs” is defined in Section 8.

“Renewal Term” is defined in Section 5.

“Site” means the areas of the roof and interior of the Building upon which the System shall be located, in accordance with the Final Design.

“Nextility” is defined in the preamble.

“Nextility Default” is defined in Section 9.A.

“Solar Energy” is defined in Section 2.A.

“Solar Energy Fee” is defined in Section 2.E.

“System” is defined in Section 1.A.

“System Operations” is defined in Section 1.B.

“Tax Attributes” means any investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the System or the output generated by the System (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

“Term” is defined in Section 5.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Energy Services Agreement as of the date first set forth above.

CUSTOMER

By _____

Name _____

Title _____

NEXTILITY Nextility, Inc.

By _____

Name Zach Axelrod

Title CEO

LIST OF SYSTEMS

Building Name and Address	System Type	Term	Pricing Terms
<Building_Name>, <Installation_Address_One_Line>	<Project_Type_Abbreviation>	<Contract_Duration_Years> Years	[ENTER PRICING TERMS HERE— E.G. \$0.10/kWh plus a 2% annual escalator]

NOTIFICATION DETAILS

Notifications from Customer to Nextility shall be emailed and mailed to:
info@nextility.com and Notification Officer, 1606 20th St NW, Washington DC 20008
In the event of an emergency in accordance with Section 16.F, Customer shall provide notice to Nextility at:

Notifications from Nextility to Customer shall be emailed and mailed to:
In case of an emergency, Nextility will provide notice to Customer at:

GREEN ENERGY FUND

The Parties acknowledge that the proposed System at the Customer's Property may be eligible to receive certain grant funding through the Green Energy Fund ("GEF"), which was created by the Puerto Rico Green Energy Incentives Act of 2010 (Act No. 83 of 2010). If Nextility determines that the proposed System (including the proposed metering configuration) would be eligible for such GEF grant funding, Nextility agrees to prepare and file the required GEF application and supporting materials. Customer agrees (i) to cooperate fully with Nextility in preparing and submitting the GEF application, (ii) to provide Nextility with all information necessary to prepare and submit the GEF application, and (iii) if the System is awarded grant funding through the GEF, to immediately notify Nextility of such award and pay to Nextility fifty percent (50%) of any grant proceeds received by Customer [fourteen (14)] days of receipt. Nextility does not guaranty that the System will be eligible to receive GEF grant funding or that the GEF Program will remain in effect and have funds available.