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**FILED**

AUG 19 2019

**Division of Consumer Affairs**

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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

VIVINT SOLAR DEVELOPER, LLC,

Respondent.

Administrative Action

**CONSENT ORDER**

**WHEREAS** this matter was opened by the New Jersey Division of Consumer Affairs (“Division”), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -210 (“CFA”), the New Jersey Fair Credit Reporting Act, N.J.S.A. 56:11-28 to -41 (“FCRA”), the New Jersey Plain Language Review Act, N.J.S.A. 56:12-1 to -13 (“Plain Language Act”), the Truth-in-Consumer Contract, Notice and Warranty Act, N.J.S.A. 56:12-14 to -56 (“TCCNWA”), the Contractors’ Registration Act, N.J.S.A. 56:8-136 to -152, the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 to -17.14, the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 to -16.2 (“Home Improvement Regulations”), and/or the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 to -9.8 (“Advertising Regulations”), have been or are being committed by or on behalf of Vivint

Solar Developer, LLC, with a main business address of 1800 W. Ashton Blvd., Lehi, UT 84043 (“Vivint Solar”), in connection with their Advertisement, offer for Sale and/or Sale of Solar Energy Systems and/or the energy they generate (hereinafter referred to as the “Investigation”);

**WHEREAS** since January 2011, Vivint Solar has entered into approximately 16,990 Vivint Solar Contracts with New Jersey Consumers, the majority of which were PPAs, whereby Vivint Solar installs and maintains a Solar Energy System on a Consumer’s home for a lease period of twenty (20) years and the Consumer pays Vivint Solar each month for the energy it produces;

**WHEREAS** the Division alleges that at certain times Vivint Solar has: (1) engaged in deceptive door-to-door solicitation practices (e.g., misrepresentations as to overall savings) and failed to provide electricity at the promised savings; (2) misrepresented an affiliation with a Consumer’s LDC; (3) performed substandard workmanship in installing Solar Energy Systems (e.g., causing damage to the roof of a Consumer’s home during installation); (4) provided substandard maintenance and support for Solar Energy Systems; (5) failed to timely respond to Consumer requests for assistance; (6) obtained Consumer Reports from a Consumer Reporting Agency without the Consumer initiating a business transaction with Vivint Solar and without the Consumer’s knowledge; (7) utilized a Vivint Solar Contract form that failed to Clearly and Conspicuously disclose materials terms (e.g., folding the paper Vivint Solar Contract so that terms and conditions are not visible); (8) included confusing cross-references in the Vivint Solar Contract (e.g., “default payment” defined at \$7 per watt installed without reference to the number of watts actually included in a Consumer’s Solar Energy System); (9) failed to provide Consumers with a copy of its certificate of commercial general liability insurance; and (10) utilized a Vivint Solar Contract form that violated clearly established legal rights of Consumers (e.g., limiting

Vivint Solar's liability for personal injury to the amount of a Consumer's "default payment," which is ordinarily used when a Consumer prematurely terminates their Vivint Solar Contract);

**WHEREAS** Vivint Solar denies the Division's allegations as set forth above;

**WHEREAS** the Division and Vivint Solar (collectively, "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Vivint Solar having consented to the entry of the within order ("Consent Order") without admitting any violation of law or finding of fact, and for good cause shown:

**IT IS HEREBY ORDERED AND AGREED AS FOLLOWS:**

**1. EFFECTIVE DATE**

1.1 This Consent Order is effective on the date that it is filed with the Division ("Effective Date").

**2. DEFINITIONS**

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "Additional Consumer" shall refer to any Consumer who submits to the Division directly or through another agency, after the Effective Date, a written Consumer complaint arising from their Vivint Solar Contract.

2.2 "Advertisement" shall be defined: (a) for purposes of the CFA, in accordance with N.J.S.A. 56:8-1(a); and (b) for purposes of the Advertising Regulations, in accordance with N.J.A.C. 13:45A-9.1, and shall include the Vivint Solar Website. This definition applies to other

forms of the word “Advertisement” including, without limitation, “Advertise,” “Advertised” and “Advertising.”

2.3 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

2.4 “Affected Consumers” shall refer to the Affected Consumers Group I and the Affected Consumers Group II who submitted to the Division directly or through another agency, prior to the Effective Date, a written Consumer complaint concerning Vivint Solar’s business practices, which complaint remains unresolved.

2.5 “Affected Consumers Group I” shall refer to Consumers listed on Exhibit A.

2.6 “Affected Consumers Group II” shall refer to Consumers listed on Exhibit B.

2.7 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.8 “Clear and Conspicuous” or “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and in terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies in a manner that is readily apparent and understandable.

2.9 “Consumer” shall be defined: (a) for purposes of the CFA, as any Person who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale; and (b) for purposes of the FCRA, in accordance with N.J.S.A. 56:11-30.

2.10 “Consumer Report” shall be defined in accordance with N.J.S.A. 56:11-30.

2.11 “Consumer Reporting Agency” shall be defined in accordance with N.J.S.A. 56:11-30.

2.12 “Customer Service Representative” shall mean any Person employed by or on behalf of Vivint Solar whose job tasks include, amongst other things, receiving and/or responding to Consumer inquiries and/or complaints.

2.13 “Home Improvement[s]” shall be defined: (a) for purposes of the Contractors’ Registration Act, in accordance with N.J.S.A. 56:8-137; and (b) for purposes of the Contractor Registration Regulations, in accordance with N.J.A.C. 13:45A-17.2, and shall include the installation of Solar Energy Systems.

2.14 “LDC” shall refer to Local Distribution Company.

2.15 “Lease” shall refer to any version of the Residential Solar Energy System Lease Agreement entered into between Vivint Solar and Consumers in New Jersey.

2.16 “New Jersey” or “State” shall refer to the State of New Jersey.

2.17 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.18 “Policy” or “Policies” shall include any procedures, practices and/or established courses of action, whether written or oral.

2.19 “PPA” shall refer to any version of the Residential Solar Power Purchase Agreement entered into between Vivint Solar and Consumers in New Jersey.

2.20 “Restitution” shall refer to all methods undertaken by Vivint Solar to resolve Consumer complaints, including the issuance of credits or refunds and the reversal of credit card or debit card charges.

2.21 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e). This definition applies to other forms of the word “Sale” including, without limitation, “Sold” and “Selling.”

2.22 “Sales Representatives” shall mean any Person hired by a Third Party Vendor or Vivint Solar, as an employee or an independent contractor, who directly engages with Consumers for the purpose of Soliciting and Selling Solar Energy Systems on behalf of Vivint Solar.

2.23 “Solar Energy System” shall refer to any residential solar photovoltaic systems that are Advertised to Consumers and offered through a Vivint Solar Contract.

2.24 “Solicitation” shall refer to both the door-to-door solicitation and telephone solicitation of Consumers by or on behalf of Vivint Solar to Sell Merchandise. This definition applies to other forms of the word “Solicitation” including, without limitation, “Solicits” and “Soliciting.”

2.25 “SPA” shall refer to any version of the Residential Solar Energy System Purchase Agreement entered into between Vivint Solar and Consumers in New Jersey.

2.26 “Third Party Vendor” shall be defined as any Person hired or engaged by Vivint Solar that hires a Sales Representative.

2.27 “Vivint Solar Contract” shall refer to any version of the PPA, Lease or SPA , as well as any contract, agreement or other titled document which is presented by or on behalf of Vivint Solar to Consumers for the purchase and/or lease of a Solar Energy System or the energy it generates, as well as all attachments, exhibits, addenda and amendments.

2.28 “Vivint Solar Website” shall refer to the website located at <https://www.vivintsolar.com>, as well as any other website operated by or on behalf of Vivint Solar.

### **3. PROHIBITED AND REQUIRED BUSINESS PRACTICES**

3.1 Vivint Solar shall not engage in any unfair or deceptive acts or practices in the conduct of any business in New Jersey and shall comply with such State and/or Federal laws, rules and regulations as now constituted, including, without limitation, the CFA, the FCRA, the Plain Language Act, the TCCNWA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and/or the Advertising Regulations.

#### **Advertising and Solicitations:**

3.2 Vivint Solar shall not Advertise, or make similar representations of savings, that "most Vivint Solar customers pay 20-30% less than their current utility rate" or that "on average, Vivint Solar customers...save up to 20%...relative to their current utility rates," unless such is accurate for Consumers in New Jersey.

3.3 In all Advertisements, Vivint Solar shall include a Clear and Conspicuous statement that a Consumer's overall electricity costs might be higher with a Solar Energy System depending on specific Consumer circumstances (e.g., price of the Vivint Solar Contract, the Consumer's electricity consumption, the price of electricity from the LDC, and seasonality).

3.4 In all Advertisements associated with PPAs, Vivint Solar shall include a Clear and Conspicuous statement that a Consumer's monthly PPA bill is based upon the amount of electricity generated by the Solar Energy System in one (1) month and not a Consumer's consumption of electricity.

3.5 In all Advertisements, Vivint Solar shall include a Clear and Conspicuous statement that if a Consumer's Solar Energy System does not produce sufficient electricity, it will be necessary for a Consumer to purchase electricity from their LDC.

3.6 In all Advertisements associated with PPAs or Leases, Vivint Solar shall Clearly and Conspicuously disclose the existence of any fees or charges associated with: (i) the removal of a Solar Energy System prior to the end of the contract term; (ii) the transfer of the contract to a new homeowner; or (iii) the relocation of the Solar Energy System to a new home.

3.7 In all Advertisements, Vivint Solar shall Clearly and Conspicuously disclose any restrictions or limitations on the Solar Energy System (e.g., warranty disclaimers), in accordance with N.J.A.C. 13:45A-9.2(a)(5).

3.8 During Solicitations, Sales Representatives shall not represent that Vivint Solar's per kWh price for electricity will be lower than the rates of the Consumer's current LDC, or that a Consumer's monthly electric bill will be lower after installation of a Solar Energy System, if such is not the case.

3.9 Vivint Solar, during Solicitations or otherwise, shall not make any representations to a Consumer that they will realize cost savings with a Solar Energy System except to the extent such cost savings is reasonably expected based upon a comparison by Vivint Solar of its electricity prices under the applicable Vivint Solar Contract compared to the Consumer's electricity costs with their current LDC or third-party energy supplier ("TPS"), which substantiation shall be available upon request to the Division or to Consumers.

3.10 During Solicitations, Sales Representatives shall not represent, directly or indirectly, that the Sales Representative is an employee or representative of any LDC, is there on behalf of an LDC, is providing any program or service on behalf of the LDC, is working in cooperation with or is in any way associated with or affiliated with an LDC.



3.11 During Solicitations, Sales Representatives shall not unduly pressure Consumers into purchasing and/or leasing a Solar Energy System from Vivint Solar.

3.12 During Solicitations, Sales Representatives shall provide Consumers with an adequate opportunity to read the Vivint Solar Contract prior to signing.

3.13 If at any point during the Solicitation, a Consumer indicates that he or she has no interest in purchasing and/or leasing a Solar Energy System from Vivint Solar, the Sales Representative shall cease the Solicitation.

3.14 Vivint Solar shall not knowingly continue to Solicit Consumers who have previously indicated that they have no interest in purchasing and/or leasing a Solar Energy System from Vivint Solar.

**General Business Practices:**

3.15 Vivint Solar shall not obtain a Consumer Report concerning a Consumer from a Consumer Reporting Agency unless Vivint Solar is permitted to do so under N.J.S.A. 56:11-31(a)(3)(f) and N.J.S.A. 56:11-31(g).

3.16 Vivint Solar shall install Solar Energy Systems by the agreed-upon date or timeframe indicated in the Vivint Solar Contract, in accordance with N.J.A.C. 13:45A-16.2(a)(7)(ii).

3.17 Vivint Solar shall exercise reasonable efforts to not cause damage to a Consumer's home while installing the Solar Energy Systems and will fix any damage or compensate the Consumer for the damage within a reasonable timeframe.

3.18 To the extent required by and in accordance with the applicable Vivint Solar Contract, Vivint Solar shall provide timely maintenance and support for the operation of Solar

Energy Systems, including, but not limited to, addressing any malfunctions causing unreasonable reductions in electricity production.

3.19 Vivint Solar shall give timely written notice to the Consumer for any delay for reasons beyond Vivint Solar's control in the installation of a Solar Energy System, in accordance with N.J.A.C. 13:45A-16.2(a)(7)(iii).

3.20 Vivint Solar shall take steps to release or subordinate the Notice of Ownership that Vivint Solar files on the Uniform Commercial Code Form of Financing Statement it records on a Consumers' real property as notice of its ownership of the Solar Energy System under a PPA or Lease within thirty (30) days after a PPA or Lease has been terminated and/or after the Solar Energy System has been removed from the Consumer's home.

**Vivint Solar Contracts:**

3.21 Vivint Solar shall Clearly and Conspicuously disclose all terms and conditions in Vivint Solar Contracts.

3.22 Vivint Solar Contracts shall be written in a simple, clear, understandable and easily readable way, including, but not limited to, eliminating cross-references that are confusing, as required by N.J.S.A. 56:12-2.

3.23 Vivint Solar shall arrange for a Consumer's execution of a Vivint Solar Contract through a software program such as DocuSign or its equivalent, and immediately following execution will arrange for the Vivint Solar Contract to be delivered to a Consumer's e-mail address.

3.24 Vivint Solar shall Clearly and Conspicuously disclose, if applicable, any terms associated with costs and fees beyond the per kWh charge in a PPA, the monthly payment in a Lease, or the contract price in an SPA.

3.25 Within thirty (30) days of the Effective Date, Vivint Solar shall revise all work orders, invoices and/or correspondence utilized in connection with Vivint Solar Contracts to include information required by the Contractors' Registration Act, the Contractor Registration Regulations and the Home Improvement Regulations.

3.26 Within thirty (30) days of the Effective Date, Vivint Solar shall revise the "Limitation of Liability" section, or equivalent section, of the Vivint Solar Contract to eliminate any statement which waives any rights Consumers have under New Jersey or Federal Consumer protection laws, in accordance with N.J.S.A. 56:12-15 (e.g., limitation on damages, one-year statute of limitations).

3.27 Within thirty (30) days of the Effective Date, Vivint Solar shall revise the "Arbitration of Disputes and Class Waiver" section, or equivalent section, of the Vivint Solar Contract to require that Consumers affirmatively opt-in if they agree to arbitration and to waive their right to participate in a class action.

**Customer Service:**

3.28 Vivint Solar shall use good faith efforts to respond to and resolve all Consumer complaints promptly.

3.29 Vivint Solar shall staff its customer service department at levels sufficient to provide Consumers with timely access, within normal business hours, to a live Customer Service Representative via telephone at 877-404-4129 and/or e-mail at [help@vivintsolar.com](mailto:help@vivintsolar.com).

3.30 Vivint Solar shall staff its customer service department at levels sufficient to provide a response to any e-mail, regular mail and/or facsimiles received outside of normal business hours within forty-eight (48) business hours of receipt. Read-receipt or generic automated responses or replies shall not be deemed a response under this subsection.

**Training:**

3.31 Within sixty (60) days of the Effective Date, Vivint Solar shall develop and implement revised training materials to ensure that its Customer Service Representatives and Sales Representatives are familiar with Vivint Solar's Policies, as well as this Consent Order.

3.32 For Sales Representatives, the training referenced in Section 3.31 shall include at a minimum:

- (a) The specific practices that are required and prohibited pursuant to this Consent Order, the CFA, the FCRA, the Plain Language Act, the TCCWNA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and the Advertising Regulations; and
- (b) A description of the remedial and/or disciplinary steps that will be taken against any Sales Representative who engages in deceptive or improper conduct or Solicitation, including forfeiture of commissions and possible termination.

3.33 Vivint Solar shall ensure that all Customer Service Representatives and/or Sales Representatives who are employed by Vivint Solar as of the Effective Date receive the required training within ninety (90) days of the Effective Date.

3.34 Vivint Solar shall ensure that any Customer Service Representatives and/or Sales Representatives hired by Vivint Solar after the Effective Date receive the required training within sixty (60) days of the Effective Date or before engaging in any customer service or Solicitation activity, whichever is later.

3.35 Within ninety (90) days of the Effective Date, Vivint Solar shall ensure that no Customer Service Representatives and/or Sales Representatives have contact with Consumers prior to receiving the required training.

3.36 Vivint Solar shall maintain an electronic record from each Customer Service Representative and/or Sales Representative acknowledging that they have participated in the required training, and will maintain that electronic record for a period of eighteen (18) months from the last day that each worked for Vivint Solar.

**Monitoring:**

3.37 Beginning (30) days after the Effective Date, for any Consumer complaint received within six (6) months of the Effective Date of his or her Vivint Solar Contract, if Vivint Solar's investigation determines that any deceptive Solicitation occurred, Vivint Solar shall provide the Consumer with the opportunity to have the Solar Energy System uninstalled and removed without expense to the Consumer.

3.38 Within thirty (30) days of the Effective Date, if a Consumer's complaint concerning deceptive Solicitation is substantiated, Vivint Solar shall further investigate a random sample of ten percent (10%) of any additional Consumers on whose homes Vivint Solar has installed a Solar Energy System under a Vivint Solar Contract obtained by the same Sales Representative during the six (6) month period prior to the date of such complaint to determine whether those Consumers were subjected to any similarly deceptive practices. If Vivint Solar substantiates that any of those additional Consumers were subjected to deceptive practices, Vivint Solar shall provide those additional Consumers with the opportunity to have their Solar Energy Systems uninstalled and removed without expense to the Consumers, and will expand the investigation to include all

Consumers on whose homes Vivint Solar has installed a Solar Energy System under a Vivint Solar Contract obtained by that Sales Representative.

**Compliance:**

3.39 The Parties agree that Steven D. Burt, Esq., Vivint Solar's Associate General Counsel and Head of Compliance, shall be designated as Vivint Solar's current Consumer Liaison, who will report directly to Vivint Solar's Chief Legal Officer. The Consumer Liaison shall serve in this position for a minimum of one (1) year from the Effective Date.

3.40 The Consumer Liaison's duties shall include at a minimum:

- (a) developing and implementing Policies to ensure that Customer Service Representatives and/or Sales Representatives comply with the terms of this Consent Order, as well as all applicable laws and regulations;
- (b) developing and implementing training materials and training programs as required by Sections 3.31 and 3.32;
- (c) ensuring that all required Customer Service Representatives and Sales Representatives receive the training referenced in Sections 3.32 through 3.36; and
- (d) overseeing the investigation of all Consumer complaints including, but not limited to, deceptive or improper Solicitation and taking appropriate remedial action.

3.39 Within seven (7) business days of designating or hiring a new Consumer Liaison, Vivint Solar shall provide the Division with written notification of the new Consumer Liaison's name, business address, e-mail address and telephone number.

**4. SETTLEMENT PAYMENT**

4.1 The Parties have agreed to a settlement of the Investigation in the amount of One Hundred Forty-One Thousand Nine Hundred Fifty-Two and 53/100 Dollars (\$141,952.53) ("Settlement Amount").

4.2 The Settlement Amount comprises Eighty-Nine Thousand Three Hundred and 00/100 Dollars (\$89,300.00) in civil penalties pursuant to N.J.S.A. 56:8-13, Twenty-Six Thousand Four Hundred Forty and 00/100 Dollars (\$26,440.00) as reimbursement of the Division's attorneys' fees, pursuant to N.J.S.A. 56:8-19, Eight Thousand Seven Hundred Twenty-Eight and 78/100 Dollars (\$8,728.78) as reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-11, Six Thousand Four Hundred Eighty-Three and 75/100 Dollars (\$6,483.75) in Restitution to Consumer A. DeFranco, and Eleven Thousand and 00/100 Dollars (\$11,000.00) in Restitution to Consumer A. Williams.

4.3 Vivint Solar shall pay One Hundred Twenty-One Thousand Nine Hundred Fifty-Two and 53/100 Dollars (\$121,952.53) of the Settlement Amount ("Settlement Payment") contemporaneously with the signing this Consent Order.

4.4 The Settlement Payment shall be made by certified or cashier's check, wire transfer, money order or credit card made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Robert N. Holup, Deputy Attorney General  
Consumer Fraud Prosecution Section  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

4.5 Upon making the Settlement Payment, Vivint Solar shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division

pursuant to the terms herein.

4.6 Twenty Thousand and 00/100 Dollars (\$20,000.00) of the Settlement Amount shall be suspended and automatically vacated ("Suspended Penalty"), which represents civil penalties pursuant to N.J.S.A. 56:8-13, at the expiration of two (2) years from the Effective Date, provided:

- (a) Vivint Solar complies in all material respects with the required and prohibited business practices as set forth in Section 3;
- (b) Vivint Solar does not engage in any acts or practices in violation of the CFA, the FCRA, the Plain Language Act, the TCCNWA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and/or the Advertising Regulations; and
- (c) Vivint Solar makes the Settlement Payment in accordance with Sections 4.3 and 4.4.

4.7 In the event Vivint Solar fails to comply with the requirements of Section 4.6, the Division shall provide Vivint Solar with notice seeking payment of the Suspended Penalty ("Notice of Noncompliance"). Vivint Solar shall be afforded a fifteen (15) day period from receipt of the Notice of Noncompliance within which to cure any noncompliance ("Cure Period"). In the event that Vivint Solar fails to cure the noncompliance within the Cure Period, the Division will file a Certificate of Debt for the amount of the Suspended Penalty.

4.8 In the event Vivint Solar subsequently fails to comply with the requirements of Section 4.6, in lieu of issuing another Notice of Noncompliance, the Division will file a Certificate of Debt for the Suspended Penalty and/or may commence additional enforcement efforts and, if applicable, may enter a Provisional Order of Suspension or Revocation of Respondents' license or registration issued by the Division.

## **5. AFFECTED CONSUMER COMPLAINT GROUP I RESOLUTION**

5.1 Within fifteen (15) days of the Effective Date, Vivint Solar shall contact the



Affected Consumers Group I, and provide such Consumers with the opportunity to have their Solar Energy Systems uninstalled and removed without expense to the Consumers.

5.2 Within thirty (30) days of the Effective Date, Vivint Solar shall provide the Division with a list of Consumers from the Affected Consumers Group I who; (a) agreed to have their Solar Energy Systems uninstalled and removed without expense; or (b) declined to have their Solar Energy Systems uninstalled and removed without expense.

5.3 Within forty-five (45) days of the Effective Date, the Division shall contact the Consumers from Affected Consumers Group I to confirm whether they agreed or declined to have their Solar Energy Systems uninstalled and removed without expense, and if the former, to confirm that they have no further issues with Vivint Solar.

5.4 Upon the Division's verification, the complaints of the Consumers from Affected Consumers Group I who have agreed to have their Solar Energy Systems uninstalled and removed without expense and who have no further issues with Vivint Solar will be deemed closed for purposes of this Consent Order.

5.5 Upon the Division's verification, the complaints of Consumers from Affected Consumers Group I who either have agreed to have their Solar Energy Systems uninstalled and removed without expense and who still have further issues with Vivint Solar, or Consumers who have declined to have their Solar Energy Systems uninstalled and removed without expense will be addressed through the process set forth in Section 6.

## **6. AFFECTED CONSUMER COMPLAINT GROUP II RESOLUTION**

6.1 No later than sixty (60) days from the Effective Date, the complaints of Affected Consumers Group II, as well as any Consumers from Affected Consumers Group I, shall be

forwarded to the ADR Unit to reach a resolution of the complaint through binding arbitration. Vivint Solar agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Contemporaneously with its execution of this Consent Order, Vivint Solar shall sign and return to the Division the Agreement to Arbitrate (a copy which is attached as Exhibit C). Vivint Solar further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to :12-3. The Division shall notify in writing the Affected Consumers Group II and any Consumers from Affected Consumers Group I whose complaints were not resolved as set forth in Section 5 of the referral of their complaints to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit D).

6.2 If Vivint Solar fails or refuses to participate in the ADR program, the arbitrator may enter a default against Vivint Solar. Unless otherwise specified in the arbitration award, Vivint Solar shall pay the arbitration award, if any, within thirty (30) days of the arbitrator's decision.

6.3 Vivint Solar's failure or refusal to comply with the requirements of this Section and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Order. Under these circumstances, the Division shall provide written notice to Vivint Solar of any such non-compliance. If Vivint Solar does not cure such non-compliance within ten (10) business days of receipt of the written notice, the Division may unilaterally discontinue this complaint resolution process.

6.4 If a Consumer within Affected Consumer Group I or Affected Consumer Group II fails or refuses to participate in the ADR program, such Consumer's complaint shall be deemed closed for purposes of this Consent Order.

6.5 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

## **7. ADDITIONAL CONSUMER COMPLAINTS**

7.1 For a period of one (1) year from the Effective Date, the Division shall forward to Vivint Solar copies of any Additional Consumer complaints received by the Division. The Division shall forward to Vivint Solar such complaints within fifteen (15) days of the Division's receipt thereof.

7.2 The Division shall notify the Additional Consumers, in writing, of the following:  
(a) that the Additional Consumer's complaint has been forwarded to Vivint Solar; (b) that he/she should expect a response from Vivint Solar within thirty (30) days from the date of this notice; and  
(c) the right to refer his/her complaint to the ADR Unit for binding arbitration if Vivint Solar disputes the complaint and/or requested relief.

7.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Vivint Solar shall send a written response to the Additional Consumer, with a copy sent by first class mail, fax or e-mail to the following:

New Jersey Division of Consumer Affairs  
Office of Consumer Protection  
Case Initiation and Tracking Unit  
124 Halsey Street, P.O. Box 45025  
Newark, New Jersey 07101  
Fax: (973) 648-3139  
E-mail: [cmt@dca.lps.state.nj.us](mailto:cmt@dca.lps.state.nj.us)  
Attn: Van Mallett, Lead Investigator

7.4 If Vivint Solar does not dispute the Additional Consumer's complaint and requested relief, Vivint Solar shall provide written notification to the Additional Consumer. Vivint Solar shall contemporaneously forward to such Additional Consumer the appropriate Restitution.

Where Restitution concerns the reversal of credit or debit card charges, Vivint Solar shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, payment shall be made by certified or cashier's check, money order or other guaranteed funds made payable to the Additional Consumer.

7.5 If Vivint Solar disputes the Additional Consumer's complaint and/or requested relief, Vivint Solar's response shall include copies of all documents concerning Vivint Solar's dispute of the Additional Consumer's complaint.

7.6 Within forty-five (45) days of Vivint Solar's receipt of the Additional Consumer's complaint, Vivint Solar shall notify the Division, in writing, as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing Restitution provided to the Additional Consumer;
- (e) Confirmation that Vivint Solar sent all mailings to the Additional Consumer as required by this Section; and
- (f) In the event Vivint Solar's written response and/or Restitution to the Additional Consumer was returned as undeliverable, the efforts Vivint Solar has undertaken to locate the Additional Consumer.

7.7 Following the Division's receipt and verification that the Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Order.

7.8 If within sixty (60) days of Vivint Solar's receipt of the Additional Consumer's complaint: (a) Vivint Solar has not notified the Division that the Additional Consumer's complaint has been resolved; (b) Vivint Solar has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Vivint Solar has notified the Division that the Additional Consumer refuses Vivint Solar's offer of Restitution, the Division shall forward the Additional Consumer complaint to the ADR Unit for binding arbitration. Vivint Solar agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Vivint Solar further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to :12-3. The Division shall notify in writing any such Additional Consumer and Vivint Solar of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines.

7.9 If Vivint Solar refuses to participate in the ADR program, the arbitrator may enter a default against Vivint Solar. Unless otherwise specified in the arbitration award, Vivint Solar shall pay the arbitration awards, if any, within thirty (30) days of the arbitrator's decision.

7.10 Vivint Solar's failure or refusal to comply with the requirements of this Section and/or participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Order. Under these circumstances, the Division shall provide written notice to Vivint Solar of any such non-compliance. If Vivint Solar does not cure such non-compliance within ten (10) business days of receipt of the written notice, the Division may unilaterally discontinue the Additional Consumer complaint resolution process.

7.11 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

7.12 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

7.13 The process set forth above in Sections 7.1 through 7.12 shall be effective for one (1) year from the Effective Date. Following the expiration of the one (1) year period, Vivint Solar may request to continue the Additional Consumer complaint resolution process for up to three (3) successive one (1) year periods upon written notice by Vivint Solar to the Division provided thirty (30) days prior to the expiration of the initial or any subsequent one (1) year period. The Division may decline to grant Vivint Solar's request at its sole discretion for any reason.

## **8. GENERAL PROVISIONS**

8.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

8.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

8.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

8.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Division and Vivint Solar.

8.5 Except as otherwise explicitly provided for in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State

or the people of the State.

8.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

8.7 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

8.8 This Consent Order shall be binding upon Vivint Solar's successors and assigns.

8.9 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order nor any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Vivint Solar; and/or (b) an admission by Vivint Solar that any of its acts or practices described in, required in, or prohibited by this Consent Order were or are unfair or deceptive or violate the Consumer protection laws of the State. This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Order; or (b) any action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

8.10 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

8.11 The Parties represent and warrant that an authorized representative of each has

signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with the authority to legally bind the respective Parties.

8.12 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

## **9. RELEASE**

9.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Vivint Solar making the Settlement Payment in the manner specified in Section 4, resolving the Affected Consumer complaints and/or providing Restitution in accordance with Sections 5, 6 and/or 7, the Division hereby agrees to release Vivint Solar from any and all civil claims and/or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Vivint Solar for violations of the CFA, the FCRA, the Plain Language Act, the TCCNWA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations and/or the Advertising Regulations arising out of the Investigation, as well as the matters specifically addressed in Section 3 of this Consent Order ("Released Claims").

9.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action, provided that nothing herein shall prevent Vivint Solar from raising the defense of set-off against an Affected Consumer or an Additional Consumer who has received Restitution; (b) actions to enforce this Consent Order; and (c) any claims against Vivint Solar by any other agency or subdivision of the State.



## **10. PENALTIES FOR FAILURE TO COMPLY**

10.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

10.2 The Parties agree that any future violations of the provisions of Section 3 of this Consent Order, the CFA, the FCRA, the Plain Language Act, the TCCNWA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Improvement Regulations, and/or the Advertising Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Vivint Solar may be liable for enhanced civil penalties.

## **11. COMPLIANCE WITH ALL LAWS**

11.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- (a) Relieving Vivint Solar of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Vivint Solar pursuant to any New Jersey or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Vivint Solar may otherwise have pursuant to any New Jersey or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

## **12. NOTICES UNDER THIS CONSENT ORDER**

12.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for

tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Robert N. Holup, Deputy Attorney General  
Consumer Fraud Prosecution Section  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For Vivint Solar:

Steven D. Burt, Esq.  
AGC and Head of Compliance  
Vivint Solar Developer, LLC  
1800 West Ashton Blvd.  
Lehi, Utah 84043

IT IS ON THE 19 DAY OF August, 2019 SO  
ORDERED.


GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: Paul R. Rodríguez by Kaitlin Caruso,  
PAUL R. RODRÍGUEZ, ACTING DIRECTOR Acting  
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS  
CONSENT ORDER ON THE DATES ADJACENT TO THEIR RESPECTIVE  
SIGNATURES.

FOR THE DIVISION:

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

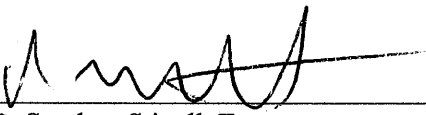
By:   
Robert N. Holup  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: August 14, 2019

124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

FOR VIVINT SOLAR DEVELOPER, LLC:

BALLARD SPAHR LLP

By:   
R. Stephen Stigall, Esq.

Dated: August 5, 2019

210 Lake Drive East  
Suite 200  
Cherry Hill, New Jersey 08002

VIVINT SOLAR DEVELOPER, LLC

By:   
Steven D. Burt, Esq.  
AGC and Head of Compliance

Dated: August 5, 2019

1800 West Ashton Blvd.  
Lehi, Utah 84043

### **Affected Consumers Group I**

1. Abene, Donna
2. Birchler, Alfred
3. Cifrodella, Audrey
4. DaCosta, Teresa
5. Eiferman, Sharon
6. Heller, Karen
7. Koch, Michael
8. Persichetti, Kenneth
9. Saunders, Carol
10. Schellinger, Anita
11. Slater, Kevin
12. Vengoechea, Guido
13. Yuschak, Paul

## **Affected Consumers Group II**

1. Lipsett, John
2. Rosato, Katie
3. Surati, Dhurmendru
4. Yennie, Sean

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CONSUMER AFFAIRS  
ALTERNATIVE DISPUTE RESOLUTION UNIT  
153 Halsey Street - Seventh Floor  
Newark, New Jersey 07101  
(973) 504 - 6100

**Arbitration Program**

*PLEASE REVIEW THIS DOCUMENT. SIGN IT AND RETURN IT TO THIS OFFICE IN THE SELF  
STAMPED ENVELOPE NO LATER THAN 10 DAYS AFTER RECEIVING THIS AGREEMENT. KEEP A  
COPY FOR YOUR OWN RECORDS.*

**INTRODUCTION**

In order to resolve a pending dispute that resulted in the filing of a complaint with or against a State agency, you have agreed to participate in an arbitration conducted by the **Alternative Dispute Resolution Unit ("ADR Unit")** of the New Jersey Department of Law and Public Safety's Division of Consumer Affairs.

Arbitration is a process in which a trained volunteer reviews the facts of the case and the issues in question in order to come up with a final decision which will resolve the controversy. Although the arbitrator is not a judge, the decision issued is final and binding on the parties who have agreed to participate in arbitration as a method of settling a dispute.\*

There are certain of your rights that may be altered by participating in arbitration and there are certain agreements to which you must be willing to commit in order for this process to be successful in resolving your complaint. Completion of the "Agreement to Arbitrate" is designed to ensure that you understand the process involved, as well as the impact of a completed arbitration.

By signing this form, you agree to comply with its terms and with the terms of any agreed upon resolution, as set forth below.

**DISCLOSURE**

Before agreeing to participate in arbitration, all parties must be aware that the arbitrator's decision is final and binding and after a decision has been issued the parties cannot use any process, including the court system, to seek further relief for the dispute at hand. Essentially, once an arbitration has been completed and a decision issued, there is no more dispute. Consequently, decisions are issued as conclusions only. There will be no findings of fact, and no opinion or rationale given by the arbitrator. In short, the arbitrator's award is final, binding and prevents either party from looking for further assistance through any other process.

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\* There are only a very few instances in which an arbitration can be reviewed by a court or reconsidered by the arbitrator. An arbitrator's award is final and usually not subject to review by the courts unless it can be shown that fraud, corruption, or misconduct occurred in the process of arbitration or by the arbitrator. This is not legal advice nor is it a legal interpretation upon which any party can rely. At no time can any member of the ADR Unit, including the arbitrator, offer or provide any form of legal advice to a participant in dispute resolution.

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CONSUMER AFFAIRS  
ALTERNATIVE DISPUTE RESOLUTION UNIT**

**AGREEMENT TO ARBITRATE**

By signing this form and participating in the arbitration process, I hereby state that I understand and agree with the following:

1. I am willingly and voluntarily participating in arbitration;
2. I will participate fully in the arbitration process and participate in good faith at all times;
3. I will not subpoena or ask the arbitrator or any member of the ADR staff and its legal counsel to testify or divulge any records or information from the arbitration process in any judicial, administrative or other proceeding or action;
4. I agree that neither the arbitrator nor the staff of the ADR Unit will be liable in anyway for damages or injunctive relief for any act or omission in connection with the arbitration conducted in accordance with the rules, procedures and guidelines provided to me before the start of the session;
5. I agree that arbitration sessions are to be private and that persons other than the parties, their attorney or other representative, the director of the ADR Unit or an authorized representative and the arbitrator may attend the proceedings only with the permission and agreement of both parties and the arbitrator;
6. I will not record the arbitration session by or with any electronic or other recording or stenographic device;
7. I will comply with all the rules, procedures and guidelines set out in the document and established by the arbitrator at the start of the session;
8. There will be no finding of fact, and no opinion or rationale provided by the arbitrator.

I HAVE READ THIS DOCUMENT CAREFULLY AND UNDERSTAND THE RULES SET FORTH ABOVE. THE ARBITRATION PROCESS HAS BEEN EXPLAINED TO ME AND ALL OF MY QUESTIONS HAVE BEEN ANSWERED. I UNDERSTAND THAT I DO NOT HAVE TO PARTICIPATE IN THIS ARBITRATION PROGRAM AND THAT PARTICIPATION IS NOT A PRECONDITION TO SEEKING ANY OTHER RELIEF PRIOR TO THE BEGINNING OF THE ADR PROCESS. I AM AWARE AND AGREE THAT ONCE I HAVE SIGNED THIS AGREEMENT TO ARBITRATE I MAY NO LONGER WITHDRAW FROM THIS ARBITRATION PROCESS. ALSO, WHEN A DECISION IS REACHED ALL PARTIES ARE BOUND BY THAT DECISION. MOREOVER, THAT DECISION IS BINDING AND PREVENTS EITHER PARTY FROM PURSUING ADDITIONAL RELIEF RELATED TO THIS MATTER IN ANY OTHER FORUM OR THROUGH ANY OTHER PROCESS.

COMPLAINANT

\_\_\_\_\_  
Signature

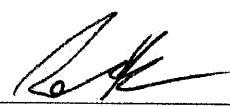
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_  
Date

RESPONDENT

  
\_\_\_\_\_  
Signature

Steven Burt  
\_\_\_\_\_  
Print Name

1800 W. Ashton Blvd  
\_\_\_\_\_  
Address

Lehi, Utah 84043  
\_\_\_\_\_  
City, State, and Zip Code

August 5, 2019  
\_\_\_\_\_  
Date