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**COMMERCIAL GUARDIAN**  
**ANNUAL SUBSCRIPTION SERVICE AGREEMENT**

THIS ANNUAL SUBSCRIPTION SERVICE AGREEMENT (this “Agreement”) is entered into as of the date listed on the executed Work Order (the “Effective Date”) between SUNation Solar Systems, Inc. (“SUNation”), a New York corporation having a principal place of business at 171 Remington Boulevard, Ronkonkoma, New York 11779 and the Building / Property Owner (“Owner”) a corporation] having an office described on the Work Order. Owner hereby engages SUNation, and SUNation hereby accepts such engagement, to perform certain services for the systems owned by Owner identified in the Work Order (“Systems”) in accordance with the terms and conditions set forth below and the Work Order. Therefore, in consideration of the promises and undertakings set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SUNation and Owner (each a “Party”) and together, the “Parties”), intending to be legally bound, hereby agree as follows:

1. **Term.** The term of this Agreement shall be defined in the Work Order from the Effective Date (the “Initial Term”), unless terminated earlier as provided in this Agreement. Unless either Party notifies the other Party of its intent not to renew the term of this Agreement within sixty (60) days prior to the expiration of the Initial Term, the term of this Agreement shall automatically renew for successive one (1) year Terms (each a “Renewal Term” and collectively “Renewal Terms”). At least sixty (60) days prior to the end of the Initial Term or any subsequent renewal term, SUNation will forward to Owner, the new rates, if any, for the Services (defined below) applicable to the renewal Term.

2. **Services.**

A. During the Term (or any renewal Term) of this Agreement, SUNation shall perform and provide for the Systems all of the services set forth on the Work Order (“Services”).

B. In addition to the Services, SUNation may, throughout the Term or any Renewal Term, provide services not included in the Services on a transactional basis (“Transactional Services”) as mutually agreed upon between the Parties. In the event Owner requests that SUNation provide Transactional Services or SUNation recommends that Transactional Services be provided in connection with the Systems, SUNation and Owner shall discuss the scope of such Transactional Services and Owner shall execute a purchase order (a separate Work Order) authorizing such Transactional Services. SUNation shall have no obligation to perform Transactional Services hereunder until a purchase order with respect thereto has been executed by Owner.

C. If SUNation or Owner learn of an event effecting the Systems or any adjoining property that poses actual or imminent risk of serious personal injury to any person or material physical damage to the Systems or to the interconnection facilities (an “Emergency”), each

Party shall immediately notify the other Party thereof, and Owner and SUNation shall jointly attempt to formulate a response. SUNation may, in the good-faith determination of SUNation, take immediate preventative or remedial action that may be necessary to ensure the (i) continued operation of the Systems and (ii) safety of personnel and property. All such remedial or preventative actions shall be deemed Transactional Services approved hereunder for which Owner shall execute a purchase order as soon as practicable. In the event that such Emergency results in any part from the breach of any obligation by, or the negligent conduct or willful misconduct of SUNation or any of its employees, agents, or subcontractors, no charge shall be due and owing from Owner for such remedial or preventative action.

D. The cost of all major equipment teardowns and overhauls and all capital improvements shall be the responsibility of Owner and not within the Scope of Work defined in the Work Order. SUNation shall promptly notify Owner in writing of any such teardowns and overhauls of major equipment that SUNation believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements. SUNation shall schedule, coordinate, contract and oversee the performance of such activities. SUNation also shall be responsible for monitoring and enforcing contract compliance by the contractor performing such work, including taking such steps, short of litigation, to enforce any warranties granted to Owner by such contractor.

3. **Commencement of System Services.** For each System identified in the Work Order, SUNation will begin providing the Services when the System: (i) is capable of the commercial delivery of energy to the full extent of its designed capacity, (ii) has begun delivering energy for sale or use, (iii) has been issued a Permission to Operate letter by the appropriate body, such as PSEG Long Island, and (iv) has been accepted by Owner according to the terms and conditions contained within a separate installation agreement between SUNation and Owner (the "Commencement Date").

4. **Compensation.** Owner shall pay the Services Fees as set forth in the Work Order. All Transactional Services performed hereunder shall be billed as set forth in the purchase order. Any amounts not paid when due hereunder shall bear interest at the rate of 1.0% per month (prorated on a daily basis) or the highest rate allowable by law, whichever is lower. Owner shall pay all federal, state, local sales and other taxes however designated which are levied or imposed by reason of the Services or any parts or materials provided by SUNation under this Agreement.

5. **Reimbursable Costs.** Owner shall reimburse SUNation for all non-direct labor costs incurred by SUNation in performing the Services listed in the Work Order ("Reimbursable Cost"). Owner's obligation under this provision is subject to (i) Owner's express approval of the costs in writing, or (ii) SUNation incurring costs in accordance with an emergency or extraordinary circumstance. In all cases, SUNation shall use reasonable commercial efforts to mitigate any adverse effect from Owner's refusal to authorize expenditures.

6. **Termination.** Either party may terminate this Agreement at any time in the event of a material breach by the other party that remains uncured after: (i) in the event of a monetary breach, ten (10) calendar days following written notice thereof; and (ii) in the event of a non-

monetary breach, thirty (30) days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party. No termination of this Agreement shall relieve Owner of making payment for Services rendered through the date of termination.

7. **Indemnification.** Owner shall indemnify, defend and hold harmless SUNation, its officers, directors, employees, agents, Affiliates and representatives (the “SUNation's Indemnified Parties”) from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with, but only to the extent of, any negligence, fraud or willful misconduct of Owner or anyone acting on Owner's behalf or under its instructions (other than SUNation and its suppliers, subcontractors, vendors, and their subcontractors and vendors and any employee or agent of the foregoing), in connection with this Agreement and Owner's obligations thereunder.

8. **Limitations of Liability.**

A. **Consequential Damages.** Notwithstanding any provision in this Agreement to the contrary, other than for losses resulting from fraud, negligence, or willful misconduct, SUNation and Owner each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement.

B. **Damages Limited to Annual Operating Fee.** The aggregate liability of SUNation), after giving effect to any deductibles, exclusions, limits, or self-insured retentions thereunder with respect to claims of Owner arising out of the performance or nonperformance of obligations under this Agreement, shall in no event exceed, during any year of the Term or Renewal Term, the cost of Services for that year payable to SUNation.

C. **Personal Liability Limited.** SUNation and Owner each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorized representatives or Affiliates of Owner or SUNation for the payment of any amounts due hereunder, or performance of any obligations hereunder.

D. **Survival.** The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling Persons, executives, directors, agents, authorized representatives, and affiliates of such party.

E. **Exclusivity.** The provisions of this Agreement constitute SUNation's and

Owner's exclusive liability, respectively, to each other, and SUNation's and Owner's exclusive remedy, respectively, with respect to the Services to be performed hereunder and Owner hereby releases SUNation performing Services hereunder, and SUNation hereby releases Owner performing its obligations hereunder, from any further liability.

9. **Representations and Warranties**. Each Party represents and warrants to the other Party that: (a) such party is a duly formed and existing in good standing under the laws of the jurisdiction of its respective formation; (b) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby; (c) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; (d) SUNation has obtained all the requisite consents and approvals in connection with the execution, delivery and performance by SUNation of this Agreement; and (e) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

10. **Insurance**. Owner and SUNation shall obtain and maintain insurance under individual or blanket insurance policies. Owner and SUNation shall obtain liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage. Automobile Liability Insurance. Owner and SUNation shall obtain Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable. Owner and SUNation shall obtain workers' compensation insurance as required by applicable laws, including employers liability insurance for all employees of SUNation. On or before the date on which insurance must be provided, each Party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

11. **Miscellaneous Provisions**.

A. **Assignment**. Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, provided that no consent is required in connection with a merger, reorganization, sale of assets or similar transaction. This Agreement shall be binding on all successors and assigns. Any purported assignment in violation of this Section shall be null and void.

B. **Force Majeure**. Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, except for the payment of money, if such failure or delay is on account of causes beyond its control, including labor disputes, civil commotion, war, fires, floods, inclement weather, governmental regulations or controls, casualty, government authority, strikes, pandemics, epidemics, local disease outbreaks, public health emergencies, communicable diseases, quarantines, or acts of God, in addition to any and all events, regardless of their dissimilarity to the foregoing, deemed to render performance of the

Agreement impracticable or impossible under the law, in which event the non-performing Party shall be excused from its obligations for the period of the delay and for a reasonable time thereafter. Each Party shall use reasonable efforts to notify the other party of the occurrence of such an event within three (3) business days of its occurrence.

C. Amendments. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

D. Survival. Notwithstanding any provisions herein to the contrary, the obligations set forth in Sections 7, 8, 9 and 11, shall survive in full force despite the expiration or termination of this Agreement.

E. No Waiver. It is understood and agreed that any delay, waiver or omission by Owner or SUNation with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by Owner or SUNation of any subsequent breach or default of the same or other required performance on the part of Owner or SUNation.

F. Notices. All notices and other communications (collectively “Notices”) required or permitted under this Agreement shall be in writing and shall be given to each Party at its address set forth above. All Notices shall be (i) delivered personally or (ii) registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed given upon receipt by the intended recipient.

G. Relationship of the Parties. SUNation has been retained by Owner as an independent contractor to operate, maintain and manage the Systems on behalf of Owner. Owner has delegated to SUNation overall responsibility for operating, maintaining and managing the Systems to ensure that the Systems are available to produce electric energy for sale by Owner. Neither SUNation nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that SUNation is the agent of Owner to the limited extent that this Agreement expressly grants SUNation the authority to act on behalf of Owner.

H. No Third-Party Beneficiaries. Except as otherwise provided in this Agreement, the Parties hereby agree that their respective representations, warranties and covenants set forth herein are solely for the benefit of the other Party, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the Parties any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

I. Counterparts. The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

J. Entire Agreement. This Agreement and any Exhibits hereto, is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the Parties, whether written or oral. This Agreement may be modified only by a written amendment signed by authorized representatives of both Parties.

K. Further Assurances. Each of the Parties shall cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall furnish information, execute and deliver documents and do other acts as the other Party may reasonably request from time to time for the purpose of carrying out the intent of this Agreement.

L. Governing Law; Venue. This Agreement shall be governed by and construed and enforced in all respects in accordance with, the laws of the New York without giving effect to the principles of conflicts of law. The parties hereto consent that any legal or equity proceeding brought in connection with, or arising out of, any matter relating to this Agreement, and the transaction to which it relates, shall be instituted only in a federal court or state court of competent jurisdiction within the State of New York, County of Suffolk. The Parties each irrevocably consent to, and submit to the jurisdiction of, the Courts of the State of New York, and waives any objection it may have to either the jurisdiction or venue of such Courts.

M. Partial Invalidity. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

N. Captions. Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.