



Performance Guarantee Agreement (PPA)

This Performance Guarantee Agreement (this “**Performance Warranty**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	Marlboro Central School District 21 Milton Turnpike, Suite 100 Milton, NY 12547 Attention: Michael Brooks, Superintendent	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(845) 236-5802	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	Michael.brooks@marlboroschools.org	E-mail	contracts@solarcity.com
Project name	Marlboro CSD RNM		

This Performance Warranty sets forth the terms and conditions of a performance guarantee provided by Seller in conjunction with that certain Solar Power Purchase Agreement by and between Seller and Purchaser dated of even date herewith (the “**PPA**”). All capitalized terms used hereunder shall have the meanings given such terms in the PPA. The term of this Performance Warranty shall be concurrent with the term of the PPA.

1. **Warranty.** Seller guarantees that during the term of the PPA the System will generate the guaranteed kilowatt-hours (kWh) (“**Guaranteed kWh**”) of energy under usual weather conditions set forth as follows:

A. Commencing on the sixth anniversary of the Commercial Operation Date, if at the end of each successive seventy-two (72) month anniversary thereof, the cumulative Actual kWh (defined below) generated by the System is *less* than the Guaranteed kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.

B. Commencing on the sixth anniversary of the Commercial Operation Date, if at the end of each successive seventy-two (72) month anniversary thereof the Actual kWh is *greater* than the Guaranteed kWh during any seventy-two (72) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the next true up period.

C. **“Guaranteed kWh”:**

True Up Term Years	Guaranteed kWh
Years 1-6	13,979,583
Years 7-12	13,565,403
Years 13-18	13,163,494

D. **“Actual kWh”** means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive seventy-two (72) month anniversary of the Commercial Operation Date and multiplied by the **“Insolation Adjustment Factor.”** The Insolation Factor shall be calculated as follows:

Insolation Adjustment Factor = X/Y, with

X = Estimated insolation for the applicable measuring period calculated as the sum of estimated monthly insolation levels in the global horizontal plane for the System in units of kWh/m² for the System configuration based on historical data; and

Y = Actual insolation for the applicable measuring period calculated as the sum of actual monthly insolation levels measured in the global horizontal plane in units of kWh/m² for the System configuration.

For purposes of measuring the Actual kWh and determining the Insolation Adjustment Factor, Seller shall use an industry-standard monitoring service, data acquisition system and/or modelling tool, or, to the extent such services, systems and/or tools are not available, Seller shall make estimates by reasonable means.

E. **“Guaranteed Energy Price per kWh”** means the dollar value per kWh as calculated in the table below:

True Up Term	\$ Utility/ kWh (X)	\$ Solar/kWh (Y)	Guaranteed Energy Price per kWh (X - Y)
Years 1-6	\$0.100	\$0.086	\$0.014
Years 7-12	\$0.112	\$0.097	\$0.015
Years 13-18	\$0.127	\$0.109	\$0.017

2. **Exclusions.** The Warranty does not apply to any repair, replacement or correction required due to the following:

A. someone other than Seller or its approved service providers installed, removed, re-installed or repaired the System;

B. Destruction or damage to the System or its ability to safely produce energy not caused by Seller or its approved service providers while servicing the System (e.g., a tree falls on the System);

C. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA (such as if Purchaser modifies or alters the System);

D. Purchaser’s breach of this Performance Warranty including being unavailable to provide access or assistance to Seller in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;

E. any Force Majeure Event (as defined below);

F. a power or voltage surge caused by someone other than Seller including a grid supply voltage outside of the standard range specified by the Utility;

G. Any System failure not caused by a System defect (e.g., such as making roof repairs); or

H. Theft of the System.

Seller hereby disclaims, and any beneficiary of this Performance Warranty hereby waives any warranty with respect to any cost savings from using the System.

3. **Force Majeure.** If Seller is unable to perform all or some of its obligations under this Performance Warranty because of a Force Majeure Event, Seller will be excused from whatever performance is affected by the Force Majeure Event, provided that:

A. Seller, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;

B. Seller's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and

C. No Seller obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

"Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by Seller's fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by Seller or under its control.

4. **Notices.** All notices under this Performance Warranty shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Performance Warranty at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

5. **Applicable Law, Arbitration.** The laws of the state where the Facility is located shall govern this Performance Warranty without giving effect to conflict of laws principles. All claims, disputes and other matters in question, arising out of, or relating to, this Performance Warranty or the breach thereof shall be decided by binding arbitration. Each arbitration, including the selecting of the arbitrator will be administered by JAMS under its Commercial Arbitration Rules. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either party can initiate an arbitration proceeding by filing the necessary forms with JAMS. Venue for any arbitration brought under this Performance Warranty shall be proper in the State of New York. Each party shall bear its own costs and expenses, including attorneys' fees, with respect to any arbitration. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Performance Warranty or to make any award that would extend to any transaction other than this Performance Warranty.

6. **Assignment and Transfer of this Performance Warranty.** Seller may assign its rights or obligations under this Performance Warranty to a third party without your consent, provided that any assignment of Seller's obligations under this Performance Warranty shall be to a party qualified to perform such obligation. Seller shall provide notice of any such assignment This Performance Warranty protects only the party that hosts the System. Purchaser's

rights and obligations under this Performance Warranty will be automatically transferred to any party to whom Purchaser properly transfers the PPA.

7. **Entire Agreement, Changes.** This Performance Warranty contains the parties' entire agreement regarding the matters set forth herein. Seller's obligations under this Performance Warranty are separate and distinct from the obligations of the Seller or its assigns under the PPA. No breach of this Performance Warranty shall affect Purchaser's obligations under the PPA. The PPA may be assigned to a third party without assignment of Seller's obligations under this Performance Warranty. Any change to this Performance Warranty must be in writing and signed by both Parties. If any portion of this Performance Warranty is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Performance Warranty shall survive.

Marlboro Central School District

SolarCity Corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____