

## LEASE OPTION AGREEMENT

This LEASE OPTION AGREEMENT (the “Agreement”) is entered into as of February \_\_, 2018, (the “Effective Date”) by and between **Valdosta City Schools** (the “Landlord”), and **Nexamp Solar, LLC**, a Delaware limited liability company (the “Developer”) (each a “Party” and together, the “Parties”).

WHEREAS, Landlord owns real property located at N Forrest St and Eastwind Rd in Valdosta, Lowndes County, Georgia, containing approximately 26 acres (the “Property), as more particularly described in Exhibit A attached hereto and has the power to lease the Property pursuant to O.C.G.A. §20-2-600; and

WHEREAS, Developer desires to obtain an option to lease a portion of the Property, which shall be substantially located as shown in the attached Exhibit B, together with related easements to develop a solar energy facility (the “Facility”) and to sell electricity therefrom.

NOW THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Grant of Option.** Landlord hereby grants to Developer the exclusive right and option (the “Option”) to lease, in accordance with the terms and conditions set forth herein, a portion of the Property, and to acquire associated easements, as more specifically described in Exhibit C attached hereto, in order to install, operate and maintain the Facility thereon.

**2. Term.** The Option period shall begin on the Effective Date and will terminate at 11:59 p.m. on the 365th day after the Effective Date, except that Developer may extend such Period for up to two (2) additional periods of six (6) months each at its sole discretion (the “Option Period”). At least thirty (30) days prior to the beginning of an extension term, Developer shall deliver in writing notice to Landlord of Developer’s intent to exercise that extension option, and Developer and Landlord, at Developer’s expense, shall prepare and record any amendments to any notice of option, and/or any other documents, necessary to evidence and give effect to the extension.

**3. Exercise of Option; Lease.**

a) Developer may exercise the Option at any time during the Option Period by providing written notice to Landlord. Promptly after exercising the Option, the Parties shall enter into a ground lease (the “Lease”), which shall include the following provisions (which provisions shall be effective notwithstanding any other Lease provision), and other terms commonly included in a commercial ground lease in the solar industry:

A. FINANCING PARTY. A “Financing Party” is any person or persons providing all or a portion of the financing for the Facility, or any person or persons providing a refinancing of any such financing, or any trustee for such person or persons.

B. EARLY TERMINATION. If Tenant does not receive a Financing Party's written commitment to enter into a financing agreement with Tenant in an amount sufficient to develop the Facility, as determined by Tenant in its sole discretion, it may terminate this Lease, but only before it begins constructing the Facility. Termination of this Lease in accordance with this Section 3(a)(B) shall not release either Party from any obligations arising before the termination effective date, but neither Party shall be obligated to perform any obligations hereunder which, but for such termination, would have arisen after the termination effective date.

C. ASSIGNMENT.

1. This Lease and rights hereunder may be assigned by Tenant

(i) in Tenant's sole discretion,

a) to any entity in which Tenant, or an affiliate thereof, has an interest;

b) to any Financing Party as security for, or in connection with, a financing or other financial arrangement related to the Lease Area and/or the Facility, as set forth in Section D; and,

(ii) subject to Landlord's approval and consent, such consent not to be unreasonably withheld, conditioned or delayed, to any other person or entity who assumes all of Tenant's rights and obligations hereunder, but the assignment shall be effective only if Tenant is not then in Default.

2. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date the assignee assumes liability.

D. FINANCING.

1. Tenant may encumber its interest in the Lease Area and in the Facility by deed to secure debt, mortgage, lease, sale and leaseback, deed of trust or similar instrument or instruments and by security agreement, fixture filing and financing statements or similar instrument or instruments (in each case, a "Security Agreement") in favor of any Financing Party.

2. If Tenant's rights or property are foreclosed upon or seized, or if a Financing Party exercises any other right under a Security Agreement granted by Tenant to that Financing Party, Landlord shall permit such Financing Party to exercise any and all Tenant rights hereunder, if there are no existing uncured Defaults. Landlord shall execute any document reasonably requested by any Financing Party to evidence and give effect to the provisions of this

Section 3(a)(D)(2), subject only to the condition precedent that no Tenant Payment Default exists that has not been cured by the Financing Party.

3. At Tenant's request, Landlord shall amend this Lease to include any provisions reasonably requested by an existing or proposed Financing Party, provided the amendment shall not materially impair Landlord's rights under this Lease.

4. Landlord shall, within ten (10) days after Tenant's written request, execute and deliver to Tenant (or to such party or parties as Tenant shall designate, including a Financing Party) the following written statements:

(i) (1) certifying whether this Lease is in full force and effect (or modified and stating the modification), (2) stating the dates on which amounts due to Landlord have been paid, (3) stating that there are no known defaults existing at the time of execution of the statement, or that defaults exist and the nature of such defaults, and (4) stating that, as of the date of such estoppel certificate, there are no disputes or proceedings under this Lease between Landlord and Tenant or, if any such dispute exists, describe the nature of such disputes or proceedings;

(ii) (1) recognizing a particular entity as a Financing Party under this Agreement and (2) agreeing to accord to such entity all the rights and privileges of a Financing Party hereunder.

#### E. TERM.

1. The Lease will consist of a Construction Period, an Operations Period, and a Decommissioning Period.

(i) Construction Period. The Construction Period will begin on the Effective Date and will terminate on the earliest of:

(a) the day after the Commercial Operation Date; or

(b) one hundred eighty (180) days after the Effective Date, except that such Period shall automatically extend for up to two (2) additional periods of six (6) months each for permitting, utility and interconnection delays, or for changes in the solar energy market or regulatory conditions. Extensions under this subsection are contingent upon Tenant providing evidence, at Landlord's reasonable request, that it continues to actively develop the Facility.

(ii) Operations Period. The Operations Period will commence at 12:01 a.m. on the day after the Commercial Operation Date and will end at 11:59 p.m. on the 25th anniversary of the Commercial Operation Date, subject to any day-for-day extension pursuant to

Section 4(a)(i). Tenant may extend the Operations Period for two (2) five (5) year terms. At least ninety (90) days prior to the beginning of an extension term, Tenant shall deliver in writing notice to Landlord of Tenant's intent to exercise that extension option, and Tenant and Landlord, at Tenant's expense, shall prepare and record any amendments to the Notice of Lease and/or any other documents necessary to evidence and give effect to the extension.

(iii) Decommissioning Period. The Decommissioning Period shall commence on the Operations Period expiration, and any extensions thereto, and shall continue for a period of 180 days. Tenant may extend the Decommissioning Period for two (2) ninety (90) day terms for weather and other delays. Upon the Decommissioning Period termination, this Lease shall expire and shall be of no further force and effect, except that such termination shall not release or modify the Parties' obligations arising before such termination.

#### F. RENT PAYMENTS

. Tenant shall pay Rent to Landlord as follows:

1. Construction Period. No Rent shall be due for the Construction Period.

2. Operations Period. During the Operations Period, Tenant shall pay to Landlord Rent of Thirty Thousand Dollars (\$30,000.00) per Operating Year, pro-rated for partial Years.

3. Decommissioning Period. No Rent shall be due for the Decommissioning Period other than any amounts due prior to the Decommissioning Period.

**4. Transfer of Option.** The Option, together with Developer's other rights hereunder, (i) may be sold, assigned, or transferred at any time by Developer to any affiliate or subsidiary of Developer or to any entity as security for or in connection with a financing or other financial arrangement related to the Property and/or the Facility; and (ii) subject to Landlord's approval and consent, such consent not to be unreasonably conditioned, withheld or delayed, may be assigned by Developer to any other person or entity who assumes all Developer's rights and obligations hereunder, provided however that the effectiveness of any such assignment shall be conditioned on Developer not being in default of this agreement.

**5. Changes in Property during Option Period.** During the Option Period or any extension thereof, Landlord shall not initiate or consent to any change in the zoning of the Property or impose or consent to any other restriction or modification of the Property that would prevent or limit Developer from using the Property for the uses intended by Developer as set forth in this Agreement.

**6. Title; Authority.** Landlord warrants that it has good and marketable title to the Property and has full power and authority to enter into and execute this Agreement and the Lease.

**7. Developer Inspections.** Landlord shall permit Developer or Developer's employees, agents and contractors during the Option Period, and any extension thereof, free ingress and egress to the Property and the right to conduct tests, investigations, and similar activities as Developer may deem reasonably necessary (collectively, "Inspections"), at Developer's sole cost and expense. The scope, sequence, and timing of the Inspections shall be at Developer's reasonable discretion, provided that Developer shall make reasonable efforts to coordinate and schedule such Inspections so as not to unreasonably interfere with Landlord's or Landlord's tenant's use and enjoyment of the Property. Inspections may be commenced at any time during the Option Period or any extension thereof. Developer and its employees, agents and contractors shall have the right to bring the necessary vehicles and equipment onto the Property to conduct the Inspections. Developer shall indemnify, defend and hold Landlord harmless against any loss or damage for personal injury or physical damage to the Property resulting from any such Inspections. Landlord shall cooperate with Developer during the Inspections, including providing information about the Property characteristics, taxes, history and encumbrances.

**8. Governmental Approvals.** Developer's ability to use the Property is contingent upon obtaining all certificates, permits, licenses and other approvals that may be required by any governmental authorities ("Permits") to construct, operate and maintain the Facility. Landlord shall reasonably cooperate with Developer in its effort to obtain such Permits, including signing such documents required to file applications with the appropriate zoning authority and other governmental authorities for the proper zoning of the Property and for other Permits as Developer reasonably requires. Without limiting the generality of the foregoing, in connection with any application by Developer for a Permit, zoning relief, release from a Conservation Use Assessment, or other authorization, entitlement or other consent, Landlord agrees not to oppose, in any way, whether directly or indirectly, any such application or approval at any administrative, judicial or legislative level. Developer will perform all other acts and bear all expenses associated with any zoning action or other procedure necessary to obtain Permits deemed necessary by Developer.

**9. Confidentiality; Recording.**

(a) The Parties shall not disclose the terms of this Agreement or the Lease to any other person, other than permitted assignees of Parties, except that either Party may disclose the terms hereof to any counsel, lender, accountant or advisor engaged by it, and Developer may disclose the terms hereof to any contractor or supplier bidding upon construction of all or part of the Facility, to any person which may seek to provide financing for or to invest in the Facility, to Georgia Power Company, its affiliates, and the local electric distribution company or cooperative, and to any future subcontractor or assignee. Further, each Party may disclose any terms hereof to the extent required by law, provided that the disclosing Party, to the extent practicable, gives notice of any request for disclosure to the non-disclosing Party and acknowledges the right of the non-disclosing Party to take such action as it deems reasonably

necessary to minimize the extent of the information disclosed and the persons to whom it is disclosed, consistent with applicable law.

(b) This Agreement shall not be recorded, but the Parties shall, at Developer's expense, execute and record with the relevant county registry of deeds an appropriate Memorandum of Option.

**10. Notices.** Notices shall be deemed received if sent by certified mail (return receipt requested), courier or nationally recognized overnight delivery service to last known address of the intended recipient. Notices may also be sent by email for which the sending Party receives a confirmation that the email message has been completely transmitted without error (of which auto-replies are insufficient). Email messages received on any day that is not a business day, or after 5:00 p.m. local time on a business day, shall be deemed to have been delivered on the next business day. A Party may change its address for delivery of notices hereunder by notice given in accordance with this Section 10. Failure of the Developer to notify Landlord of an address change for it or any entity providing financing to Developer shall excuse the Landlord from complying with any notice obligation herein to such changed addresses, provided however that Landlord will in no event be excused from providing notices required herein to all addresses of which Landlord has notice. Notices will be deemed given upon receipt or upon the failure to accept delivery.

Every notice, demand, or request hereunder shall be sent to the addresses listed below:

If to Landlord: Valdosta City Schools  
1204 Williams Street  
Valdosta, GA 31601  
Attn: Todd Cason  
Email: tcason@gocats.org

With a copy to: Gary Moser, Esq.  
1706 N. Patterson St.  
Valdosta, GA 31602  
Email: kj@garymoserlaw.com

If to Developer: Nexamp Solar, LLC  
4 Liberty Square, Third Floor  
Boston, MA 02109  
Attn: Chris Clark  
Email: cclark@nexamp.com

With a copy to: Mark A. Gould, Esq.  
Arnall Golden Gregory LLP  
171 17th Street NW  
Suite 2100  
Atlanta, GA 30363-1031  
Email: mark.gould@agg.com

**11. Taxes.** Developer shall have no responsibility for taxes assessed against the Property or due during the Option Period.

**12. Insurance and Indemnity.**

(a) Landlord and Developer shall each maintain appropriate insurance for their respective interests in, and activities on, the Property.

(b) To the fullest extent permitted by law, the Developer shall indemnify, defend and hold the Landlord, its directors, officers, employees, agents and contractors (the “Indemnified Persons”), harmless from and against all Losses incurred by the Indemnified Persons to the extent arising from, or out of, any claim for, or arising out of, any injury to or death of any person or loss or damage to property to the extent arising out of the Developer’s, its employees’ and agents’ negligence, willful misconduct, or unlawful conduct. The Developer shall not be obligated to indemnify any Indemnified Person for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Indemnified Person or for statutory violation of, or punitive damages against, any Indemnified Person except to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Developer or of any of the Developer’s contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a Party or person described in this Agreement.

(c) Developer shall indemnify, defend and hold harmless Landlord from and against any and all Losses arising from or out of any pollution or contamination that violates any local, state or federal environmental protection law, policy or regulation, that is caused by the Developer or any of its employees, invitees, agents or contractors following the Effective Date.

(d) “Losses” means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all reasonable attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

**13. Miscellaneous.**

(a) This Agreement shall be governed and interpreted by, and construed in accordance with, the laws of the State of Georgia.

(b) This Agreement cannot be modified except by written modification executed by Landlord and Developer in the same manner as this Agreement is executed. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(c) This Agreement contains all agreements, promises and understandings between Landlord and Developer, and no verbal or oral agreements, promises, statements, assertions or representations by Landlord and Developer or any employees, agents, contractors, or other representatives of either, shall be binding upon Landlord or Developer.

(d) This Agreement shall extend to and bind the heirs, personal representatives, successors, and assigns of Landlord and Developer and shall constitute covenants running with the land.

(e) The Parties acknowledge that each Party's performance under this Agreement may require the other Party's assistance and cooperation. Each Party therefore agrees, in addition to those provisions in this Agreement specifically requiring one Party to assist the other, that it will at all times during the Option Period reasonably cooperate with the other Party, as required in its reasonable discretion, and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder. From time to time and at any time at and after the Effective Date, each Party shall execute, acknowledge and deliver such documents, and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 13(e).

(f) Each provision of this Agreement shall be considered severable and if any provision of this Agreement is determined for any reason to be invalid, void, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not render the entire Agreement to be void or a nullity as a whole and shall not impair the operation of or otherwise affect those portions of this Agreement which are valid, enforceable and legal.

(g) It is the intent of the parties hereto that the Landlord shall not waive any sovereign or official immunity defense by virtue of any provision in this Agreement and no provision of this Agreement shall be construed or interpreted so as to be an attempt to waive any such defense.

(h) This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same agreement. Signed email transmissions of this Agreement shall be considered an original of the Agreement and shall have the same effect and force as signed hard-copy originals of the Agreement.

IN WITNESS WHEREOF, the Parties have agreed to the terms of this Lease Option Agreement as of the Effective Date.

**DEVELOPER**

**LANDLORD**

**Nexamp Solar, LLC**

**Valdosta City Schools**

By: Nexamp Capital, LLC,  
its sole member

By: Nexamp, Inc.,  
its sole member

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

The Property means the real property located at N Forrest St and Eastwind Rd in Valdosta, Lowndes County, Georgia, meaning Parcel 0149C-128A, containing approximately 26 acres, which is all or a portion of the property conveyed to Landlord by deed dated May 1, 2003, recorded in the Lowndes County Clerk of Courts Office at Book 2548, Page 217.

**EXHIBIT B**

**LOCATION OF LEASE AREA**

**[INSERT]**

**EXHIBIT C**  
**EASEMENTS**

The Easements shall be as follows and as more particularly set forth in the Lease:

(a) A non-exclusive right of pedestrian, vehicular and equipment access over, across and through Landlord's Property at all times, on such portions thereof as are necessary or convenient (in Developer's reasonable discretion) for ingress and egress to and from the Facility and the public roads adjacent to the Property, the location of which shall be determined according to the Lease;

(b) An exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect the Facility to the local electric distribution company's electrical distribution system, the location of which will be determined by the local distribution company and according to the Lease;

(c) A solar easement, burdening all of the Property (including, without limitation, the airspace above the Property) pursuant to which Landlord agrees that it shall not construct buildings or structures, initiate or conduct activities, or plant trees or vegetation of any type or allow any trees or other vegetation on the Property which now or hereafter in Developer's reasonable opinion may be a hazard to the Facility, overshadow or otherwise block or interfere with access of sunlight to the Facility and/or interfere with Developer's exercise of its rights hereunder. Developer may (but shall not be obligated to) remove, at Landlord's cost, any buildings or other structures which violate this easement. Notwithstanding anything herein to the contrary, Landlord shall reimburse Developer for such costs as an abatement of rent under the Lease; and

(d) If required by the local distribution company, Landlord shall grant to the local distribution company an exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure (including, without limitation, metering equipment substations and switching stations) and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect the Facility to the local distribution company electrical distribution system, the location of which will be determined by the local distribution company before the Facility's commercial operations date.

All of the foregoing Easements shall be perpetual, shall burden the Property and shall run with the land for the benefit of Developer, its successors and assigns (including any permitted assignees of Developer's rights under the Lease), and their respective agents, contractors, subcontractors and licensees. No additional consideration shall be due or payable to Landlord for the granting of any such Easements. Easements created by this Exhibit shall in no way interfere with or disrupt the operations of the Landlord conducted on the Property outside the Easements' locations.