

ALTRIS THERMAL, LLC

POLICIES AND PROCEDURES MANUAL

(Effective September 2017)

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INTRODUCTION

Altris Thermal, LLC (“Altris”) is a Utah limited liability company and a dealer of Thermal Resource Technologies, Inc. an Indiana corporation that does business as Solar America Solutions (“Solar America”). “Dealer” means a non-exclusive sub-dealer that has signed the Altris’s General Terms and Conditions.

Dealer has been appointed as Company’s sub-dealer. Dealer agree to comply with all of the terms, conditions, and obligations stated in these policies and procedures.

Altris is not the manufacturer, seller, or supplier of the Products. Altris will transmit Dealer’s payment for the Products to Solar America.

SECTION 1 - DEFINITIONS

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, this Person.

"Agreement" means the terms and conditions in this policies and procedures manual.

"Claim" means any Action made or brought against a Person entitled to indemnification under **Section 17**.

"Committed Products" has the meaning set out in **Section 14.06**.

"Confidential Information" has the meaning set out in **Section 15**.

"Control" (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, regarding any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership or voting securities, by contract, or otherwise.

"Customer" means a purchaser that is (a) a Reseller located in the Territory who or that purchases Products for resale to End Users, or (b) an End User.

"Dealer" has the meaning set out in the preamble of this Agreement.

"Dealer Contract" means any contract or agreement to which Dealer is a party or to which any of its material assets are bound.

"Defective" means not conforming to the warranties in **Section 16.02**.

"Defective Products" means Products that are Defective, which for the avoidance of doubt, includes any Nonconforming Products accepted by Dealer under **Section 9.04**.

"Delayed Shipment Date" has the meaning set out in **Section 9.03**.

"Delivery Point" means the street address specified in the applicable Purchase Order.

"Disclosing Party" has the meaning set out in **Section 15.01**.

"Dispute" has the meaning set out in **Section 20.18**.

"Effective Date" means the date first set out above.

"End User" means the final purchaser that (a) has acquired (directly or indirectly through a Reseller) from Dealer a Product for (i) its own and its Affiliate's internal use and not for resale, remarketing or distribution or (ii) incorporation into its own products and (b) is an individual or entity located in the Territory.

"Excess Product" means a Product that, when counted together with all other Products having the same description and received by Dealer under the same Purchase Order, is in excess of the quantities of the Products ordered under that Purchase Order.

"Force Majeure Event" has the meaning set out in **Section 20.20**.

"Governmental Authority" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of the government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of this organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, award or determination entered by or with any Governmental Authority.

"Initial Term" has the meaning set out in **Section 14.01**.

"Inspection Period" has the meaning set out in **Section 9.04**.

"Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (a) Patents; (b) Trademarks; (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, files, records, schematics, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; and (f) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights or forms of protection under the Laws of any jurisdiction throughout in any part of the world.

"Last-time Buy Period" has the meaning set out in **Section 7.02(a)**.

"Law" means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order or other requirement or rule of law of any Governmental Authority.

"Limited Warranty" has the meaning set out in **Section 16.02**. **"Losses"** has the meaning set out in **Section 17.01**.

"Minimum Order Commitment" means the minimum order commitments as set out in Schedule 5.

"Nonconforming Products" means any Product received by Dealer from Solar America under a Purchase Order that: (a) does not conform to the product identification listed in the applicable Purchase Order; or (b) on visual inspection, Dealer reasonably determines are otherwise Defective.

"Notice" has the meaning set out in **Section 20.04**.

"Notify" means to give Notice.

"Party" means Altris and Dealer individually.

"Parties" means Altris and Dealer collectively.

"Patents" means all patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models).

"Payment Failure" has the meaning set out in **Section 14.03(a)**.

"Person" means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority or any other entity.

"Personnel" means agents, employees or subcontractors engaged or appointed by Altris or Dealer.

"Post-term Resale Period" has the meaning set out in **Section 14.05**.

"Price" has the meaning set out in **Section 10.01**.

"Products" means those products that are identified in Schedule 1, as Altris may amend in its sole discretion from time to time. For the purposes of **Section 9**, Products are deemed to include Nonconforming Products.

"Purchase Order" means Dealer's then-current standard form purchase order.

"Purchase Order Transaction Terms" means the terms specified by Dealer in its Purchase Order under **Section 8.02**. For the avoidance of doubt, the term Purchase Order Transaction Terms does not include any general terms or conditions of any Purchase Order.

"Receiving Party" has the meaning set out in **Section 15.01**.

"Renewal Term" has the meaning set out in **Section 14.02**.

"Reseller" means a construction trade contractor that (a) has received from Dealer or Solar America training for proper installation of the Products and (b) that contracts with End Users for purchase and installation of Products to be purchased by the Reseller from Dealer.

"Representatives" means a Party's Affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors and permitted assigns.

"Solar America's Intellectual Property Rights" means all Intellectual Property Rights owned by or licensed to Solar America.

"Solar America's Trademarks" means all Trademarks owned or licensed by Solar America.

"Term" has the meaning set out in **Section 14.02**.

"Territory" has the meaning set out in Schedule 3.

"Third Party Product" has the meaning set out in **Section 16.06**.

"Trademarks" means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, trade dress, corporate names and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights and all similar or equivalent rights or forms of protection in any part of the world.

"Trade Secrets" means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures and other confidential and proprietary information and all rights therein.

"US" means the United States of America, including its territories and possessions.

"**Warranty Period**" has the meaning set out in the written warranty statement provided by Solar America to Customers as described in **Section 16.02**.

SECTION 2 – APPOINTMENT AS DEALER

Section 2.01 Non-Exclusive Appointment. Altris hereby appoints Dealer, and Dealer accepts the appointment, to act as a non-exclusive dealer of Products to Customers located in the Territory during the Term solely in accordance with the terms and conditions of this Agreement. Altris may sell the Products to any other Person, or engage in business with other dealers, resellers, distributors, retailers, contractors and other resellers, and end users, in and outside the Territory.

Section 2.02 Dealer Not to Represent Competitive Products. Dealer agrees that it shall not, during the Term, represent in any fashion (whether as sales representative, dealer, reseller, distributor, retailer, or otherwise) any manufacturer or seller of other products that are competitive with the Products for which Dealer has accepted appointment under this Agreement. A competitive product is one that a reasonable Customer would likely deem to be a reasonable alternative to, or a substitute for, the Products, and therefore (by way of example only) would include solar thermal collector panels but would not include solar photovoltaic collector panels. Dealer shall only purchase the Products from Solar America through Altris.

Section 2.03 Quality Standards. By accepting this appointment, Dealer agrees to conform to all quality standards established from time to time by Solar America or Altris for its distributors, dealers and resellers. These quality standards are subject to change by Solar America or Altris on ten (10) days' prior Notice to Dealer.

Section 2.04 Status As Independent Contractor. The relationship between Altris and Dealer is solely that of purchaser and intermediary. Dealer understands and agrees that any purchase order made is between Dealer and Solar America and that Altris is not an agent or representative of Solar America. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties or an employee/employer relationship. Dealer is an independent contractor under this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

SECTION 3 - NO FRANCHISE OR BUSINESS OPPORTUNITY AGREEMENT

The Parties acknowledge that this Agreement is not a franchise or business opportunity agreement and does not create a franchise or business opportunity relationship between the Parties. If any provision of this Agreement is deemed to create a franchise or business opportunity relationship between the Parties, then (a) the Parties shall negotiate in good faith, if reasonably possible in the sole discretion of Solar America and Altris, to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as a dealer agreement and not a franchise or business opportunity agreement, and (b) if no such modification is reasonably possible in the sole discretion of Solar America or Altris, or if the parties, despite good faith negotiations toward that end, have failed to reach agreement on any such modification, then Altris may immediately terminate this Agreement.

SECTION 4 - TERMS OF AGREEMENT PREVAIL OVER DEALER'S PURCHASE ORDER

This Agreement is expressly limited to the terms of this Agreement and the Purchase Order Transaction Terms and Dealer understands and agrees that the Purchase Order Transaction Terms contained in the applicable Purchase Order govern the purchase of Products by Dealer from Solar America. Dealer understands that the terms of this Agreement prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement and expressly exclude any of Dealer's general terms and conditions contained in any Purchase Order or other document issued by Dealer. Besides transmitting Dealer's payment for the Products to Solar America, Altris is not liable to Dealer for any aspect of the Dealer's purchase of the Products.

SECTION 5 - GENERAL DEALER PERFORMANCE OBLIGATIONS

Section 5.01 Marketing and Reselling Products and Managing Installations of Products through Certified Personnel. Dealer shall, in good faith and at its own expense:

- (a) market, advertise, promote, and resell the Products to Customers located in the Territory consistent with good business practice, in each case using its best efforts to maximize the sales volume of the Products;
- (b) establish and maintain a sales and marketing organization sufficient for the sale of the Products as directed by Altris or Solar America, and to make the Products (subject to availability from Solar America) promptly available to Customers to meet their demand;

- (c) only resell or offer to resell the Products that Dealer currently has in inventory or that have been ordered from Solar America and which order has been accepted by Solar America as available for delivery to Dealer, unless Dealer has received prior written authorization from Altris;
- (d) develop and execute a marketing plan sufficient to fulfill its obligations under this Agreement;
- (e) assure that all installations of Products sold to Dealer by Solar America (whether to be installed by Dealer for an End User or by a Reseller for an End User) will be performed directly by (or under the direction of) personnel of Dealer or of the Reseller who are Solar America Solutions certified installers;
- (f) have sufficient knowledge of the industry and products competitive with each Product (including specifications, features and benefits) so as to be able to explain in detail to Customers:
 - (i) the differences between the Product and competing products; and
 - (ii) information on standard protocols and features of each Product;
- (g) obtain Solar America's approval, through Altris, of use of Solar America's Trademarks in marketing, advertisement and promotion of the Products;
- (h) in any and all contact between Dealer and any Customer, Dealer must identify to the Customer Dealer's full legal name, trade name, or both;
- (i) market, advertise, promote and resell Products and conduct business in a manner that reflects favorably at all times on Products and the good name, goodwill and reputation of Solar America;
- (j) in all marketing and sales activities directed by Dealer or its permitted Resellers toward End Users that are permitted Governmental Authorities or their respective agencies or units, (i) obtain Altris's written consent to marketing and sales plans for such governmental contracts, (ii) keep Altris informed as to all applicable legal and regulatory requirements applicable to Dealer, Resellers, or other Persons in dealings with such Governmental Authorities or their respective agencies or units in respect of

such marketing and sales activities, and (iii) assure that Dealer (and Resellers and other Persons who may be subject to such requirements) (A) timely and fully and accurately complies with all filing or notification or other disclosure requirements, and (B) does not violate any prohibitions imposed by Law or by such Governmental Authority or its agencies or units with respect to matters such as lobbying, campaign contributions, or unlawful payments or gratuities; and

(k) promptly Notify Altris of any complaint or adverse claim about any Product or its use of which Dealer becomes aware or of any inquiry or communication from any Governmental Authority in connection with activities of Dealer or its permitted Resellers hereunder; provided, that nothing in this Agreement requires Dealer to reveal proprietary pricing information.

Section 5.02 Reporting and Recordkeeping. Dealer shall, at its own expense:

(a) submit to Altris, as requested, complete and accurate periodic reports of inventory, marketing and sales of the Products and the name and address of the Customers to whom the Products are sold, in such format and in such scope and such frequency as are acceptable to Altris; and

(b) maintain books, records and accounts of all transactions and activities covered by this Agreement and permit full examination thereof by Altris and its Representatives at reasonable times and intervals.

Section 5.03 Authority to Perform Under this Agreement. Dealer shall, at its own expense, obtain and maintain required certifications, credentials, licenses and permits necessary to conduct business in accordance with this Agreement.

Section 5.04 Customer Support. Throughout the Term, Dealer shall, at its own expense:

(a) have sufficient knowledge of the industry and products competitive with the Product (including specifications, features and benefits) so as to be able to explain in detail to the Customers the differences between the Product and competing products;

(b) ensure that an adequate number of trained, capable and qualified technical Personnel with sufficient knowledge of the Product are available during normal business hours to assist Customers; and

(c) respond to Customers regarding the general operation and use of the Product, including:

- (i) acting as a liaison between the Customer and Altris in matters requiring Altris's participation;
- (ii) providing general Product information and configuration support on standard protocols and features; and
- (iii) collecting relevant technical problem identification information.

Dealer may not modify, alter, replace, reverse engineer or otherwise change the Products it sells to Customers.

Section 5.05 Government Approval. If at any time during the Term any notification, registration or approval is required for giving legal effect in any applicable jurisdiction to this Agreement or the transactions contemplated under this Agreement, Dealer shall:

- (a) immediately take whatever steps may be necessary to properly notify, register or obtain approval;
- (b) be responsible for any charges incurred in connection with notifying, registering or obtaining this approval; and
- (c) keep Altris currently informed of its efforts regarding this **Section 5.05**.

Dealer understands that Solar America is not obligated to ship any Products or other materials to Dealer under this Agreement until Dealer has provided Solar America with satisfactory evidence that this approval, notification or registration is not required or that it has been obtained.

Section 5.06 Prohibited Acts. Notwithstanding anything to the contrary in this Agreement, neither Dealer nor Dealer Personnel shall:

- (a) make any representations, warranties, guarantees, indemnities, similar claims or other commitments:
 - (i) actually, apparently or ostensibly on behalf of Altris or Solar America, or
 - (ii) to any Customer regarding the Products, which representations, warranties, guarantees, indemnities, similar claims or other commitments are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims or other commitments in this Agreement or any written documentation provided by Altris or Solar America to Dealer;

- (b) engage in any unfair, anticompetitive, misleading or deceptive practices respecting Altris, 's Trademarks or the Products, including any product disparagement or "bait-and-switch" practices;
- (c) sell or offer to sell any thermal-solar panels other than the thermal-solar panels that are offered for sale by Altris from Solar America. Dealer may sell or offer to sell other products that compete with Solar America's thermal-solar panels, including photovoltaic solar panels;
- (d) during the Term, manufacture, promote, market, sell or distribute Products using promotional information and material, unless the promotional information or material was provided or authorized by Altris under **Section 6.01(d)**;
- (e) sell or offer to sell any of the Products outside of the Territory, or ship or otherwise deliver Products to any location that is outside of the Territory;
- (f) violate any Law applicable to Altris or Solar America's activities under this Agreement;
- (g) cease to function actively during the Term as a full-service dealer of products that are similar in kind or purpose to the Products;
- (h) Purchase or attempt to purchase the Products or similar goods or services from Solar America, except through Altris; or
- (i) Offer for sale any goods or services not purchased from Altris.

Section 5.07 Government Contracts. Dealer shall not resell Products to any Governmental Authority or its respective agencies without express written approval from Altris. Unless otherwise separately agreed to in writing between Altris and Dealer, no provisions required in any contract with any Governmental Authority, or subcontract related thereto, shall be a part of this Agreement, imposed on or binding on Altris, and this Agreement is not deemed an acceptance of any government provisions that may be included or referenced in Dealer's request for quotation, Purchase Order or any other document

SECTION 6 - ALTRIS PERFORMANCE OBLIGATIONS

Section 6.01 Altris Performance Obligations. During the Term, Altris shall:

- (a) allow Dealer and its Resellers to participate, at its or their own expense, in any marketing, advertising, promotion and sales, or training programs or events that Solar America may make generally available to its authorized dealers and resellers of Products, provided that Altris or Solar America may alter or eliminate any program at any time;
- (b) approve or reject, in its sole discretion, any promotional or marketing information or material submitted by Dealer for Altris's approval within ten (10) business days of receipt; and
- (c) Transmit Dealer's payments for the Product to Solar America.

SECTION 7 - AGREEMENT TO PURCHASE AND SELL THE PRODUCTS

Section 7.01 Terms of the Sale. Altris shall sell Products to Dealer at the Prices, and on the other terms and conditions, set out in this Agreement.

Section 7.02 Availability/Changes in Products. Altris may, in its sole discretion:

- (a) remove Products from Schedule 1, on two weeks' Notice to Dealer (the period of time from the delivery of Notice through the end of the notice period, the "**Last-time Buy Period**"), but only if Altris discontinues all sales of these Products; and
- (b) add to the Products on Schedule 1 without Notice to Dealer; and
- (c) on two weeks' Notice to Dealer, effect changes to any Products or parts/accessories thereto (except where continued availability is required by Law),

in each case, without obligation to modify or change any Products previously delivered or to supply new Products meeting earlier specifications.

Section 7.03 Last-time Buy. Dealer may make one last-time buy during the Last-time Buy Period of enough Products to fulfill its then-pending commitments to the Customers. Altris shall use commercially reasonable efforts to supply the last time buy and is in no event required to supply any Product if Altris determines that:

- (a) the Product is infringing;

- (b) the sale would violate the Law;
- (c) the sale would limit Altris's ability to fill orders of its other customers; or
- (d) it does not have an adequate inventory of Products to fill the last-time buy order.

SECTION 8 - ORDERS PROCEDURE

Section 8.01 Purchase Order. Dealer shall make a Purchase Order via Altris's intranet and/or website to purchase all Products. By placing a Purchase Order, Dealer makes an offer to purchase Products under the terms and conditions of this Agreement, including the Purchase Order Transaction Terms and Altris's policies and procedures, which will be made available on Altris's website or otherwise provided to Dealer, and on no other terms. Except regarding the Purchase Order Transaction Terms, any variations made to the terms and conditions of this Agreement by Dealer in any Purchase Order are void and have no effect.

Section 8.02 Purchase Order Transaction Terms.

Dealer shall specify the following information (collectively, the "**Purchase Order Transaction Terms**") in each Purchase Order:

- (a) a list of Products to be purchased, including make/model number, capacities, sizes, performance metrics and other information sufficient to identify with particularity the Products intended to be purchased and sold;
- (b) quantities ordered;
- (c) requested delivery date; and
- (d) Delivery Point.

Unless waived by Altris in any particular case, Altris shall not be required to consider for acceptance any Purchase Order that does not specify at least five (5) of Solar America's proprietary solar collectors of the type that are then specified as Products hereunder.

Section 8.03 Altris's Right to Accept or Reject Purchase Orders.

Altris may, in its sole discretion, accept or reject any Purchase Order. Altris may accept any Purchase Order by confirming the order (whether by written confirmation, invoice or otherwise) or by delivering the Products, whichever occurs first. No Purchase Order is binding on Altris or Solar America unless accepted by Altris as provided in this Agreement.

Section 8.04 Cancellation of Purchase Orders.

(a) Altris or Solar America may, in its sole discretion, without liability or penalty, cancel any Purchase Order placed by Dealer and accepted by Altris, in whole or in part:

- (i) if Solar America discontinues its sale of Products or reduces or allocates its inventory of Products;
- (ii) if Altris determines that Dealer is in violation of its payment obligations under or is in material breach of its obligations under this Agreement; or
- (iii) pursuant to Altris's rights under **Section 10.04**.

Dealer shall have no right to cancel or amend any Purchase Order submitted by it. If Altris consents to any such cancellation or amendment that results in reduction in the amount of Product ordered by it, or if Dealer shall fail to pay for such Purchase Order and consequently it is not shipped to Dealer, Dealer shall pay a twenty percent (20%) restocking fee on the Prices specified for the Products that are not purchased under any such Purchase Order.

Section 8.05 Minimum Order Commitments. Dealer shall meet the Minimum Order Commitments for each year of this Agreement. If Dealer fails to achieve the Minimum Order Commitments, Altris may refuse to renew this Agreement under **Section 14.02**.

SECTION 9 - SHIPMENT AND DELIVERY

Section 9.01 Shipment. Unless expressly agreed to by the Parties in writing, Altris shall select the method of shipment of and the carrier for the Products. Altris may, in its sole discretion, without liability or penalty, make partial shipments of Products to Dealer. Each shipment constitutes a separate sale, and Dealer shall pay for the units shipped, whether the shipment is in whole or partial fulfillment of a Purchase Order.

Section 9.02 Delivery. Unless expressly agreed to by the Parties, Solar America shall deliver the Products to the Delivery Point, using Solar America's or manufacturer's standard methods for packaging and shipping the Products. All Prices are FOB Solar America's warehouse or other designated shipping point.

Section 9.03 Late Delivery. Any time quoted for delivery is an estimate only; provided, however, that Solar America shall use commercially reasonable efforts to deliver all Products on or before the requested delivery date. Solar America is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery. However, if Solar America delays shipment of all or any Products for more than ninety (90) days after the estimated delivery date (the "**Delayed Shipment Date**"), then Dealer may, as its sole remedy therefor, cancel the related Purchase Order regarding the delayed Products by giving Solar America Notice within two (2) business days of the Delayed Shipment Date. Subject to Dealer's rights under this **Section 9.03**, no delay in the shipment or delivery of any Product relieves Dealer of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment or other orders of Products.

Section 9.04 Inspection. Dealer shall inspect Products received under this Agreement within five (5) business days of its receipt (the "**Inspection Period**") of the Products and either accept or, if any Products are Nonconforming Products or Excess Products, reject these Products. Dealer will be deemed to have accepted the Products unless it Notifies Solar America in writing of any Nonconforming Products or Excess Products during the Inspection Period and furnishes written evidence or other documentation as required by Solar America. If Dealer timely Notifies Solar America of any Nonconforming Products or Excess Products, Solar America shall determine, in its sole discretion, whether the Products are Nonconforming Products or Excess Products. If Solar America determines that the Products are Nonconforming Products or Excess Products, it shall either, in its sole discretion:

- (a) if the Products are Nonconforming Products, (i) replace the Nonconforming Products with conforming Products, or (ii) refund the Price for the Nonconforming Products, together with all shipping expenses incurred by Dealer in connection therewith; or

- (b) if the Products are Excess Products, pay to have Dealer ship such Excess Products back to Solar America.

Dealer shall ship, at Solar America's expense (and using carriers specified by Solar America), all Nonconforming Products and Excess Products to Solar America's facility from which it shipped

such items. If Solar America exercises its option to replace Nonconforming Products, Solar America shall, after receiving Dealer's shipment of Nonconforming Products, ship to Dealer, at Solar America's expense and risk of loss, the replaced Products to a location designated by Dealer.

Dealer acknowledges and agrees that the remedies set out in **Section 9.04(a)** and **Section 9.04(b)** are Dealer's exclusive remedy for the delivery of Nonconforming Products or Excess Products, subject to Dealer's rights under **Section 16.02** and **Section 16.04** regarding any Nonconforming Products for which Dealer has accepted delivery under this **Section 9.04**.

Section 9.05 Limited Right of Return. Except as provided under **Section 9.04**, **Section 16.02** and **Section 16.04**, all sales of Products to Dealer under this Agreement are made on a one-way basis and Dealer has no right to return Products purchased under this Agreement.

Section 9.06 Title and Risk of Loss.

- (a) Title to Products shipped under any Purchase Order passes to Dealer upon receipt by Dealer at the Delivery Point.
- (b) Risk of loss to Products shipped under any Purchase Order passes to Dealer upon receipt by Dealer at the Delivery Point.

SECTION 10 - PRICE AND PAYMENT

Section 10.01 Price. Dealer shall purchase the Products from Altris at the prices set out in Altris's dealer price list in effect when the Altris accepts the related Purchase Order ("**Prices**"). Altris's dealer price list as of the Effective Date of this Agreement, subject to change from time to time with or without Notice from Altris, is attached to this Agreement as Schedule 4.

Section 10.02 Shipping, Crating, and Handling Charges, Insurance and Taxes. Dealer shall pay for all shipping, crating and handling charges and insurance costs. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Dealer under this Agreement. Dealer is responsible for all charges, costs and taxes; provided, that, Dealer is not responsible for any taxes imposed on, or regarding, Altris's income, revenues, gross receipts, Personnel or real or personal property or other assets.

Section 10.03 Payment Terms. Dealer shall, unless the Altris otherwise agrees in writing, pay the full price of the Products upon placing an order. Dealer shall make all payments in US dollars by check or wire transfer in accordance with Altris's then applicable wire transfer instructions.

Section 10.04 Unsatisfactory Credit Status. Each issuance of a Purchase Order to Altris constitutes Dealer's representation and warranty that Dealer can pay for the Products identified in the Purchase Order in accordance with the terms of this Agreement. Dealer shall furnish Altris with statements accurately and fairly evidencing Dealer's financial condition as Altris may, from time to time, reasonably request. Throughout the term, Dealer shall be in compliance with all loan covenants and other obligations to its lenders. Dealer shall Notify Altris immediately of any and all events that have had or may have a material adverse effect on Dealer's business or financial condition, including any change in management, sale, lease or exchange of a material portion of Dealer's assets, a change of Control or ownership, or breach of any loan covenants or other material obligations of Dealer to its lenders. If, at any time, Altris determines in its sole discretion that Dealer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Altris's other rights under this Agreement, at law or in equity, Altris may without liability or penalty, take any of the following actions, immediately (accompanied by Notice to Dealer of such actions):

- (a) modify the payment terms specified in **Section 10.03** for outstanding and future purchases, including requiring Dealer to pay one hundred percent of the amount of any invoice for a Purchase Order at the time of acceptance of the Purchase Order by Altris;
- (b) reject any Purchase Order received from Dealer;
- (c) cancel any previously accepted Purchase Orders;
- (d) delay any further shipment of Products to Dealer;
- (e) stop delivery of any Products in transit in the possession of a common carrier or bailee and cause the Products in transit to be returned to Solar America;
- (f) terminate this Agreement; or
- (g) accelerate the due date of all amounts owing by Dealer to Altris.

No actions taken by Altris under this **Section 10.04** (nor any failure of Altris to act under this **Section 10.04**) constitute a waiver by Altris of any of its rights to enforce Dealer's

obligations under this Agreement including the obligation of Dealer to make payments as required under this Agreement.

Section 10.05 Late Payments. Dealer shall pay interest on all late payments, calculated daily and compounded monthly, at the lesser of (a) the rate of one percent per month or (b) the highest rate permissible under applicable Law. Dealer shall also reimburse Altris for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at Law (which Altris does not waive by the exercise of any rights under this Agreement), Altris may (a) suspend the delivery of any Products if Dealer fails to pay any amounts when due under this Agreement and (b) terminate this Agreement under the terms of **Section 14.03(a)**.

Section 10.06 No Set-off Right. Dealer shall not, and acknowledges that it has no right, under this Agreement, any Purchase Order, any other agreement, document or Law, to withhold, offset, recoup or debit any amounts owed (or become due and owing) to Altris or any of its Affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Altris or Altris's Affiliates, whether relating to Altris's or its Affiliates' breach or non-performance of this Agreement, any Purchase Order, any other agreement between (a) Dealer or any of its Affiliates and (b) Altris or any of its Affiliates, or otherwise.

SECTION 11 - RESALE OF THE PRODUCTS

Section 11.01 Credit Risk on Resale to Customers. Dealer is responsible for all credit risks regarding, and for collecting payment for, all products (including Products) sold to third parties (including Customers), whether or not Dealer has made full payment to Altris for the products. The inability of Dealer to collect the purchase price for any product does not affect Dealer's obligation to pay Altris for any Product.

Section 11.02 Resale Prices. Dealer unilaterally establishes its own resale prices and terms regarding products it sells, including Products.

SECTION 12 - COMPLIANCE WITH LAWS

Section 12.01 General Compliance With Laws Representation and Warranty. Dealer represents and warrants to Altris that it is in compliance with all Laws and Dealer Contracts applicable to this Agreement, the Products and the operation of its business.

Section 12.02 General Compliance With Laws Covenant. Dealer shall comply with all Laws.

SECTION 13 - INTELLECTUAL PROPERTY RIGHTS

Section 13.01 Ownership. Subject to the express rights and licenses granted by Altris in this Agreement, Dealer acknowledges and agrees that:

- (a) any and all Solar America's Intellectual Property Rights are the sole and exclusive property of Solar America or its licensors;
- (b) Dealer shall not acquire any ownership interest in any of Solar America's Intellectual Property Rights under this Agreement;
- (c) any goodwill derived from the use by Dealer of Solar America's Intellectual Property Rights inures to the benefit of Solar America or its licensors, as the case may be;
- (d) if Dealer acquires any Intellectual Property Rights in or relating to any product (including any Product) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to Solar America or its licensors, as the case may be, without further action by either Party; and
- (e) Dealer shall use Solar America's Intellectual Property Rights solely for the purposes of performing its obligations under this Agreement and only in accordance with this Agreement and the instructions of Solar America.

Section 13.02 Solar America's Trademark License Grant. This Agreement does not grant either Party the right to use the other Party's or their Affiliates' Trademarks except as set out under this **Section 13.02**. Subject to Solar America's trademark policies of which Dealer may be advised by Altris from time to time, which may be amended from time to time in Solar America's sole discretion, and the terms and conditions of this Agreement, Solar America hereby grants to Dealer a non-exclusive, non-transferable and non-sublicensable license to use Solar America's Trademarks in the Territory during the Term and the Post-term Resale Period solely on or in connection with the promotion, advertising and resale of the Products in accordance with the terms and conditions of this Agreement. Dealer will promptly discontinue the display or use of any Trademark to change the manner in which a Trademark is displayed or used with regard to the Products when requested by Solar America. Other than the express licenses granted by this Agreement, Solar America grants no right or license to Dealer by implication, estoppel or otherwise to the Products or any Intellectual Property Rights of Solar America.

Section 13.03 Prohibited Acts. Dealer shall not:

- (a) take any action that interferes with any of Solar America's rights in or to Solar America's Intellectual Property Rights, including Solar America's ownership or exercise thereof;
- (b) challenge any right, title or interest of Solar America in or to Solar America's Intellectual Property Rights;
- (c) make any claim or take any action adverse to Solar America's ownership of Solar America's Intellectual Property Rights;
- (d) register or apply for registrations, anywhere in the world, for Solar America's Trademarks or any other Trademark that is similar to Solar America's Trademarks or that incorporates Solar America's Trademarks in whole or in confusingly similar part;
- (e) use any mark, anywhere, that is confusingly similar to Solar America's Trademarks;
- (f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Products) or any Solar America Trademark, after being informed in writing by Solar America that such action in Solar America's opinion disparages, dilutes the value of, or reflects negatively on Solar America's trademark;
- (g) misappropriate any of Solar America's Trademarks for use as a domain name without prior written consent from Solar America;
- (h) place Solar America's name or any of Solar America's Trademarks in, or directly or indirectly as part of, the trade, corporate or firm name or style of Dealer or any division, subsidiary, Reseller, or affiliate thereof; and
- (i) alter, obscure or remove any of Solar America's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased

under this Agreement (including Products), marketing materials or other materials that Solar America may provide.

Section 13.04 Solar America's Trademark Notices. Dealer shall ensure that all Products sold by Dealer and all related quotations, specifications and descriptive literature, and all other materials carrying Solar America's Trademark, are marked with the appropriate trademark notices in accordance with Solar America's instructions.

Section 13.05 No Continuing Rights. On expiration or earlier termination of this Agreement, subject to Dealer's rights under the Post-term Resale Period:

(a) Dealer's rights under **Section 13.02** cease immediately; and

Dealer shall immediately cease all display, advertising, promotion and use of all of Solar America's Trademarks and shall not thereafter use, advertise, promote or display any trademark, trade name or product designation or any part thereof that is similar to or confusing with Solar America's Trademarks or with any trademark, trade name or product designation associated with Solar America or any Product.

SECTION 14 - TERM; TERMINATION

Section 14.01 Initial Term. The term of this Agreement commences on the Effective Date and continues for a period of 5 years, unless and until terminated as provided under this Agreement ("**Initial Term**").

Section 14.02 Renewal Term. On expiration of the Initial Term, this Agreement automatically renews for additional successive one year terms unless and until either Party provides written Notice of nonrenewal at least 90 days before the end of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), or unless and until sooner terminated as provided under this Agreement. If the Term is renewed for any Renewal Term(s) under this **Section 14.02**, the terms and conditions of this Agreement during each Renewal Term are the same as the terms in effect immediately before the renewal, subject to any change in Prices payable for the Products and payment terms during the applicable Renewal Term as set out in **Section 10** or changes to or in availability of the Products as set out in **Section 7.02**. In the event either Party provides timely Notice of its intent not to renew this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

Section 14.03 Right to Terminate. Altris may terminate this Agreement by providing written Notice to Dealer:

- (a) if Dealer fails to pay any amount when due under this Agreement ("**Payment Failure**") and the failure continues for 5 business days after Dealer's receipt of written Notice of nonpayment;
- (b) if within any twelve month period, three or more Payment Failures occur;
- (c) if Dealer breaches any provision of this Agreement (other than a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Dealer within thirty (30) days after Dealer's receipt of written Notice of the breach;
- (d) under and in accordance with **Section 10.04**;
- (e) if Dealer becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency Law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due;
- (f) if Dealer fails to observe or perform any term, covenant or condition of Dealer's under any agreement with Altris, other than this Agreement;
- (g) if Dealer:
 - (i) sells, leases, exchanges, transfers or disposes of a material portion of Dealer's assets;
 - (ii) merges or consolidates with or into any other Person, unless Dealer is the surviving entity and has a net worth greater than or equal to its net worth immediately before the merger or consolidation; or
 - (iii) undergoes a change of Control, in any case without Altris's prior written consent; or
- (h) in the event of a Force Majeure Event affecting Dealer's performance under this Agreement for more than sixty (60) consecutive days.

Any termination under this **Section 14.03** is effective on Dealer's receipt of Altris's written Notice of termination or any later date set out in the Notice.

Dealer may terminate this Agreement at any time by providing Altris with 30 days' advanced written notice.

Section 14.04 Effect of Expiration or Termination.

(a) The Term's expiration or earlier termination does not affect any rights or obligations that:

(i) are to survive the expiration or earlier termination of this Agreement under **Section 20.03**; and

(ii) were incurred by the Parties before the expiration or earlier termination; provided that all indebtedness of Dealer to Altris of any kind is immediately due and payable on the effective date of the Term's expiration or earlier termination without further Notice to Dealer.

(b) Any Notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Products to Dealer that are scheduled to be made after the effective date of termination, whether or not any orders for the Products had been accepted by Altris.

(c) Subject to **Section 14.05**, upon the expiration or earlier termination of this Agreement, Dealer shall promptly:

(i) cease to represent itself (including without limitation on Dealer's website and in any promotional material) as Altris's authorized dealer regarding the Products, and shall otherwise desist from all conduct or representations that might lead the public to believe that Dealer is authorized by Altris to sell the Products;

(ii) return to Altris all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on Altris's Confidential Information;

(iii) permanently erase all of Altris's Confidential Information from its computer systems; and

(iv) certify in writing to Altris that it has complied with the

requirements of this **Section 14.04**.

(d) Subject to **Section 14.04(a)**, the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement.

Section 14.05 Post-term Resale Period. Subject to **Section 14.06**, on the expiration or earlier termination of this Agreement, except for termination by Altris under **Section 14.03(a)**, **Section 14.03(b)**, **Section 14.03(c)**, **Section 14.03(d)**, or **Section 14.03(e)**, Dealer may, in accordance with the applicable terms and conditions of this Agreement, sell off its existing inventories of Products for a period of three (3) months following the last day of the Term (the "**Post-term Resale Period**").

Section 14.06 Altris's Buy-back Right. Within ten (10) days following the Term's expiration or earlier termination, Dealer shall Notify Altris in writing of the description and quantity all Products in Dealer's remaining inventory. In the Notice, the Dealer shall separately identify which of those Products Dealer is then contractually obligated to resell to one or more Customers ("**Committed Products**"). On or before the thirtieth (30th) day after Altris receives the Notice, Altris may, in its sole discretion, offer to purchase all or a portion of any remaining inventory, free of all liens, claims or encumbrances, at a price equal to the lesser of Dealer's cost therefor and Altris's then prevailing dealer price. Dealer must accept Altris's offer and promptly deliver, at Dealer's expense and risk of loss, the ordered Products to Altris's designated carrier for delivery to Altris. Repurchased Products must be returned in their original packaging, unopened and undamaged. Altris shall pay the repurchase price to Dealer either by:

- (a) the issuance of a credit against any indebtedness of Dealer to Altris; or
- (b) if the repurchase price exceeds the indebtedness, by payment of the excess to Dealer within ten (10) days after delivery to Altris.

Section 14.07 End of Term Purchase Restrictions. During the Term's last three months, Dealer shall purchase Products in quantities that are no greater than an amount that Dealer reasonably determines is necessary to meet Customer demand in that period.

SECTION 15 - CONFIDENTIALITY

Section 15.01 Protection of Confidential Information. From time to time during the Term, Altris (as the "**Disclosing Party**") may disclose or make available to Dealer (as the

"Receiving Party") information about its business affairs, goods and services, sales forecasts or pipeline information, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information and other sensitive or proprietary information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure and as established by documentary evidence:

- (a) is or becomes generally available to and known by the public other than resulting from, directly or indirectly, any breach of this **Section 15** by the Receiving Party or any of its Representatives;
- (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that the third party is not and was not prohibited from disclosing the Confidential Information;
- (c) was known by or in the possession of the Receiving Party or its Representatives before being disclosed by or on behalf of the Disclosing Party;
- (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or
- (e) must be disclosed under applicable Law.

The Receiving Party shall, until such Confidential Information is no longer Confidential Information (through no fault or lack of care of the Receiving Party):

- (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
- (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and
- (iii) not disclose any Confidential Information to any Person, except to

the Receiving Party's Representatives who must know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

The Receiving Party shall be responsible for any breach of this **Section 15** caused by any of its Representatives. On the expiration or earlier termination of this Agreement, the Receiving Party and its Representatives shall, under **Section 14.04**, promptly return all Confidential Information (including copies) and all documents and tangible materials that contain, reflect, incorporate or are based on Confidential Information received under this Agreement.

SECTION 16 - REPRESENTATIONS AND WARRANTIES

Section 16.01 Dealer's Representations and Warranties. Dealer represents and warrants to Altris that:

- (a) it is a legal entity of the type described in the introductory clause to this Agreement that is duly organized, validly existing and in good standing in the jurisdiction of its incorporation/organization/formation;
- (b) it is qualified and licensed to do business and in good standing in every jurisdiction where qualification and licensing is required;
- (c) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;
- (d) the execution of this Agreement by its Representative whose signature is set out at the end hereof has been duly authorized by all necessary action of Dealer; and
- (e) when executed and delivered by each of Altris and Dealer, this Agreement will constitute the legal, valid and binding obligation of Dealer, enforceable against Dealer in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally or the effect of general principles of equity (regardless of whether considered in a proceeding at law or in equity).

Section 16.02 Limited Product Warranty. Altris makes no warranty, express or implied, as to the Products. Dealer must look to Solar America for any warranty question or claim. No warranty is extended to Dealer under this Agreement. Dealer shall not provide any warranty regarding any Product other than the warranty provided by Solar America as described in this Agreement. Subject to the provisions of **Section 16.03, Section 16.04, Section 16.05, Section 16.06**, Solar America makes certain limited warranties regarding the Products ("**Limited Warranties**") solely to and for the Customer's benefit, which will either be:

- (a) included a written warranty statement with the Product; or
- (b) Solar America's standard limited warranty in force when the Product is delivered by Dealer to Customer.

No warranty is extended to Dealer under this Agreement. Dealer shall not provide any warranty regarding any Product other than the Solar America warranty described in this **Section 16.02**.

Section 16.03 Warranty Limitations. Limited Warranties do not apply where the Product:

- (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Solar America;
- (b) has been reconstructed, repaired or altered by Persons other than Solar America or its authorized Representative; or
- (c) has been used with any Third Party Product, hardware or product that has not been previously approved, in writing, by Solar America.

Section 16.04 Extent of Liability. During the Warranty Period, regarding any Defective Products:

- (a) notwithstanding anything in this Agreement to the contrary, Solar America's liability under any Limited Warranty is discharged, in Solar America's sole discretion and at its expense, by:
 - (i) repairing or replacing the Defective Products; or

(ii) crediting or refunding the Price of the Defective Products, less any applicable discounts, rebates or credits;

(b) Dealer or Customer is responsible for all costs and risk of loss associated with the delivery of Defective Products to Solar America for warranty repair or replacement;

(c) Solar America is responsible for all costs and risk of loss associated with the delivery of repaired or replaced products to the Delivery Point; and

(d) Dealer is responsible for all costs and risk of loss associated with the delivery and return of the repaired or replaced Products to Customer.

All claims for breach of a Limited Warranty must be received by Solar America no later than ten (10) days after the expiration of the limited warranty period of the Product.

Dealer has no right to return for repair, replacement, credit or refund any Product except as set out in this **Section 16.04**. Any reconstruction, repair, alteration or replacement of any Product by Dealer (either directly or through any third party) shall void Solar America's warranty obligations, if any, with respect to such Product.

THIS SECTION 16.04 SETS FORTH DEALER'S SOLE REMEDY AND SOLAR AMERICA'S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY RELATING TO THE PRODUCTS.

Section 16.05 Warranties Disclaimer; Non-reliance. EXCEPT FOR THE LIMITED EXPRESS WARRANTIES DESCRIBED IN SECTION 16.02, (A) NEITHER SOLAR AMERICA NOR ANY PERSON ON SOLAR AMERICA'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE; (iii) TITLE; OR (iv) NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND (B) DEALER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SOLAR AMERICA, OR ANY OTHER PERSON ON SOLAR AMERICA'S BEHALF, EXCEPT AS SPECIFICALLY DESCRIBED IN SECTION 16.02 OF THIS AGREEMENT. ALTRIS HAS NO LIABILITY REGARDING ANY PRODUCT.

Section 16.06 Third Party Products. Dealer acknowledges and agrees that Products purchased by Dealer under this Agreement may contain, be contained in, incorporated into, attached to or packaged together with the products manufactured by a third party ("**Third Party Products**"). Third Party Products are not covered by the Limited Warranty. For the avoidance of doubt, Solar America makes no representations or warranties regarding any Third Party Products.

SECTION 17 - INDEMNIFICATION

Section 17.01 Dealer General Indemnification. Subject to the terms and conditions set out in **Section 17.02**, Dealer (as "**Indemnifying Party**") shall indemnify, hold harmless, and defend Altris and its parent, officers, directors, partners, members, shareholders, employees, agents, Affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers (collectively, "**Losses**"), incurred by Indemnified Party, arising out of or relating to any Claim of a third party:

- (a) relating to a breach or non-fulfillment of any representation, warranty or covenant under/representation or warranty set out in this Agreement by Indemnifying Party or Indemnifying Party's Personnel;
- (b) alleging or relating to any negligent or more culpable act or omission of Indemnifying Party or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement;
- (c) alleging or relating to any bodily injury, death of any Person or damage to real or tangible personal property caused by the acts or omissions of Indemnifying Party or its Personnel;
- (d) relating to a purchase of a Product by any person or entity purchasing directly or indirectly through Indemnifying Party and not directly relating to a claim of Limited Warranty breach; or

(e) relating to any failure by Indemnifying Party or its Personnel to comply with any applicable Laws.

Section 17.02 Exception on General Indemnification. Notwithstanding anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify or defend Indemnified Party against any third-party Claim if the third-party Claim or corresponding Losses arise out of or result from the Indemnified Party's or its Personnel's gross negligence, recklessness, or willful misconduct.

SECTION 18 - LIMITATION OF LIABILITY

Section 18.01 No Liability for Consequential or Indirect Damages.
EXCEPT FOR LIABILITY FOR BREACH OF CONFIDENTIALITY OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT IS EITHER PARTY OR ITS REPRESENTATIVES LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Section 18.02 Altris Limited Liability. Except for Altris's obligation to forward Dealer's payment for the Product, Altris has no liability to Dealer under this Agreement.

SECTION 19 - INSURANCE

During the Term, Dealer shall, at its own expense, maintain and carry in full force and effect, commercial general liability (including product liability) in a sum no less than \$1,000,000 per occurrence with financially sound and reputable insurers. On Altris's request, Dealer shall provide Altris with a certificate of insurance from Dealer's insurer evidencing the insurance coverage specified in this Section. The certificate of insurance shall name Altris and Solar America as an additional insured. Dealer shall provide Altris ten (10) business days' advance written Notice in the event of a cancellation or material change in its insurance policy.

SECTION 20 - MISCELLANEOUS

Section 20.01 Further Assurances. On Altris's reasonable request, Dealer shall, at its sole cost and expense, execute and deliver all further documents and instruments, and take all further acts, necessary to give full effect to this Agreement.

Section 20.02 Entire Agreement.

(a) Subject to **Section 4**, this Agreement, including and together with the Purchase Order Transaction Terms and all related exhibits, schedules, attachments and appendices, constitutes the Parties' sole and entire agreement regarding the subject matter of this Agreement and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding this subject matter.

(b) Without limitation of anything contained in **Section 20.02(a)**, Dealer acknowledges that except for the representations and warranties contained in **Section 16.02**, neither Dealer nor any other Person has relied on any other express or implied representation or warranty, either written or oral, on behalf of Altris, including any representation or warranty arising from statute or otherwise in Law.

Section 20.03 Survival; Limitation of Actions. Subject to the limitations and other provisions of this Agreement:

(a) the Parties' representations and warranties contained herein and related exceptions, limitations or qualifiers survive the expiration or earlier termination of this Agreement for a period of twelve (12) months after the expiration or termination; and

(b) other provisions of this Agreement that, to give proper effect to its intent, should survive expiration or termination of this Agreement, shall survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of twelve (12) months after expiration or termination.

Notwithstanding any right under any applicable statute of limitations to bring a claim, no lawsuit or other action based on or arising in any way out of this Agreement may be brought by either Party after the applicable survival period's expiration; provided, however, that the foregoing limitation does not apply to the collection of any amounts due to Altris under the Agreement; and provided, further, that any claims asserted in good faith with reasonable

specificity and in writing by Notice before the applicable survival period's expiration is not thereafter barred by the relevant period's expiration, and these claims survive until finally resolved.

Section 20.04 Notices. Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other Party at the address commonly used to communicate with such party (or as the receiving Party may designate from time to time in accordance with this section). Either Party may, by action of its officer designated below to receive Notices hereunder on its behalf, expressly consent to that Party's receipt of a Notice from the other Party by electronic mail transmitted to a certain Internet email address. In the event of such an express consent by such an officer, any Notice so electronically transmitted shall be deemed to have been delivered effective upon such officer's actual receipt of such electronic mail message, if and when evidenced by such officer's express confirmation of his or her receipt of such a Notice. In the absence of such a consent and such a confirmation of receipt of electronic communications as set forth in the preceding sentences, each Party shall deliver all Notices by personal delivery or by nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage or courier charges prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

Section 20.05 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means the agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means the statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

Section 20.06 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

Section 20.07 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, the invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable the term or provision in any other jurisdiction. On a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the Parties' original intent as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 20.08 Amendment and Modification. No amendment to, or rescission, termination or discharge of, this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement, and signed by an authorized representative of each Party that is a party to such amendment, rescission, termination or discharge.

Section 20.09 Waiver.

- (a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by an authorized representative of the Party waiving its right.
- (b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.
- (c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:
 - (i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or
 - (ii) any act, omission or course of dealing between the Parties.

Section 20.10 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Dealer's rights under **Section 9.03**, **Section 9.04**, and **Section 16.04** are Dealer's exclusive remedies for the events specified therein.

Section 20.11 Equitable Remedies. Dealer acknowledges and agrees that

(a) a breach or threatened breach by Dealer of any of its obligations under **Section 15** would give rise to irreparable harm to Altris for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Dealer of any of these obligations, Altris shall, in addition to any and all other rights and remedies that may be available to Altris at law, at equity or otherwise in respect of this breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction or an arbitrator, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages do not afford an adequate remedy. Dealer agrees that Dealer will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction or an arbitrator of an order granting equitable relief, in either case, consistent with the terms of this **Section 20.11**.

Section 20.12 Assignment. Dealer may not assign (by contract or agreement, or by merger, consolidation, amalgamation or other operation of law) any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Altris. Any purported assignment or delegation in violation of this Section is null and void and constitutes a basis for immediate termination by Altris of this Agreement. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

Section 20.13 Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

Section 20.14 No Third-Party Beneficiaries.

(a) Except as set out in **Section 20.14(b)**, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(b) The Parties hereby designate each of (i) the Altris's parents, Affiliates, successors and permitted assigns, and (ii) the officers, directors, partners, members, shareholders, employees, and agents, of the Altris and of each person or party described in the immediately-preceding clause (i), as third-party beneficiaries of **Section 17** of this Agreement, each having the right to enforce **Section 17** but subject to such third party's obligation to seek to enforce such indemnification and related rights as are provided therein only through mandatory binding arbitration under **Section 20.18**.

Section 20.15 Choice of Law. This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the Laws of the State of Indiana, US, without regard to the conflict of laws provisions thereof to the extent these principles or rules would require or permit the application of the Laws of any jurisdiction other than those of the State of Indiana. The Parties agree that the United Nations Convention on Contracts for the International Sale of Products does not apply to this Agreement.

Section 20.16 Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, (a) in violation of such Party's covenants to submit any such dispute to the dispute resolution procedures set forth in **Section 20.18** of this Agreement, including but not limited to confidential binding arbitration, and (b) if maintaining such an action, litigation or proceeding would not be in violation of the mandatory arbitration provisions of **Section 20.18** by reason of the exclusion from such Section 20.18 set forth therein, then in any forum other than the United States District Court for the Southern District of Indiana, Indianapolis Division (or, if such federal court does not have jurisdiction to hear any of the claims to be adjudicated, the courts of the State of Indiana sitting in Marion County, Indiana). Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of these courts (as applicable) and agrees to bring any action, litigation or proceeding only in such courts (as applicable). Each Party agrees that a final judgment in any action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

Section 20.17 Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments and appendices attached to this Agreement, or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no Representative of the other Party has represented, expressly or otherwise, that the other Party would not seek to enforce the foregoing waiver in the event of a legal action, (b) it has considered the implications of this waiver, (c) it makes this waiver voluntarily, and (d) it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

Section 20.18 Mandatory Binding Arbitration. In the event that a Party (or an Indemnified Party) desires to resolve any dispute, controversy or claim between or among the Parties (or the Indemnified Parties) arising out of or relating to this Agreement, or the breach, termination or invalidity hereof, including the formation and interpretation of this Agreement and whether or not such dispute, controversy or claim is arbitrable (a "**Dispute**"), such Party

(including such Indemnified Party) shall refer such Dispute to, and such Dispute shall be finally determined by, arbitration in accordance with the JAMS commercial arbitration rules (or, if this Agreement is with a Dealer that is not organized under US law, the JAMS International Arbitration Rules). The arbitral tribunal shall consist of one arbitrator. The place of arbitration shall be Indianapolis, Indiana, US. The costs of any arbitration and the fees of the arbitrator shall be advanced by the Persons who or that are parties to the arbitration in equal shares; each such Person who or that is party to the arbitration (regardless of whether it prevails in the arbitration) shall bear its own costs, fees and expenses in connection with the arbitration and the underlying disputes. The Parties hereto and the parties to the arbitration shall endeavor to keep the existence and nature of the disputes leading to the arbitration, and the arbitration proceedings and award or other resolution, confidential. Notwithstanding the foregoing mandate that each Party submit each and every Dispute only to binding arbitration in accordance with this section, Altris may file suit in a court of competent jurisdiction in accordance with the provisions of **Section 20.16** to obtain ancillary equitable remedies that it reasonably believes are available to it under **Section 20.11**.

Section 20.19 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement, if the Party sending the facsimile, e-mail or other means of electronic transmission has received express confirmation from an officer of the other Party who is designated by this Agreement as authorized to receive Notices on behalf of this Party hereunder, to the effect that the recipient Party received the Agreement from the sending Party (not merely an electronic facsimile confirmation or automatic e-mail reply).

Section 20.20 Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party's ("**Impacted Party**") reasonable control, including the following force majeure events ("**Force Majeure Events**": (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) requirements of Law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any Governmental Authority; (g) international, national or regional emergency; (h) international or national shipping or trucking strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power. The Impacted Party shall give Notice within five (5) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the

failure or delay and ensure the effects of the Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of sixty (60) days following written Notice given by it under this **Section 20.20**, either Party may thereafter terminate this Agreement on ten (10) days' written Notice.

Section 20.21 No Public Announcements or Trademark Use. Unless expressly permitted under this Agreement, Dealer shall not:

- (a) make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotion materials regarding Altris or its business unless:
 - (i) it has received the express written consent of Altris, or
 - (ii) it must do so by Law; or
- (b) use Solar America's Trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of Solar America.

Dealer hereby agrees to be bound by the terms, conditions, and obligations stated in this policies and procedures manual.

DEALER

Entity Name (if applicable)

By_____

Name:

Title:

SCHEDULE 1

PRODUCT LIST

SunQuest 250™

SCHEDULE 2

TRADEMARK LIST

SunQuest 250 TM

Solar America Solutions

SCHEDULE 3

TERRITORY

The Territory is the 50 states of the United States of America.

SCHEDULE 4

PRICE LIST

The Price List for the Products as of the Effective Date of this Agreement (which Altris may change from time to time, with or without Notice to Altris) is as follows:

[to be inserted (if applicable)]

SCHEDULE 5

MINIMUM ORDER COMMITMENTS

Reference Section 8.05 of the Agreement.

The Minimum Order Commitment shall be 25 of Solar America's proprietary solar collector panels every 12-month period during the Term, commencing with the Effective Date. Each such 12-month period shall (a) commence the same day of the month as the day of the month upon which the Effective Date fell (e.g. the 15th or the month) and (b) end on the day before the corresponding day of the 12th month after such commencement date.