

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CONSUMER FRAUDS AND PROTECTION BUREAU

In the Matter of

Assurance No. 19-161

**Investigation by Letitia James,
Attorney General of the State of New York, of**

Vivint Solar, Inc. and Vivint Solar Developer, LLC,

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law § 349 into Vivint Solar, Inc. and Vivint Solar Developer, LLC (“Vivint Solar” or “Respondents”) regarding Vivint Solar’s marketing, sale, and service of consumer contracts. This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s Investigation and the relief agreed to by the NYAG and Respondents whether acting through their respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

NYAG’s FINDINGS

General

1. Vivint Solar, Inc. is a foreign business corporation located at 1800 West Ashton Boulevard, Lehi, Utah 84043.
2. Vivint Solar Developer, LLC is a foreign limited liability company located at 1800 West Ashton Blvd., Lehi, Utah 84043. Vivint Solar Developer is a licensed contractor in the State of New York.

3. Vivint Solar provides solar energy to residential consumers by either selling solar energy to consumers or selling or leasing solar panels to consumers. Solar energy, as a renewable energy source, is better for the environment than traditional energy sources.

4. Vivint Solar has been operating in New York since late 2012 marketing, selling and servicing its products.

5. Vivint Solar offers three solar energy options to consumers: A Power Purchase Agreement (“PPA”) (which accounts for the majority of its contracts), the purchase of solar panels (“Purchase”), or the lease of solar panels (“Lease”). Regardless of the option, the consumer must pay his or her traditional energy provider to be connected to the energy grid as well as for any additional energy that the consumer needs beyond what is produced by the solar panels.

6. Vivint Solar provides consumers an extended right to cancel the PPA and Lease (until work associated with installing a solar energy system on a consumer’s home begins) that exceeds federal and state minimum requirements, and a similar right to terminate a Purchase.

7. Under a PPA, Vivint Solar and a consumer enter into a 20-year contract for the consumer to purchase power from Vivint Solar. Vivint Solar installs solar panels, which Vivint Solar continues to own, on the consumer’s roof. The consumer then pays Vivint Solar for the solar energy produced by Vivint Solar’s solar panels, measured in kilowatt-hours (“kWh”), which is a unit of energy representing 1000 watts of power used for 1 hour. The price that the consumer initially pays per kWh is set by the contract, and that price per kWh increases 2.9% per year, compounding annually for the life of the contract. PPAs are by far Vivint Solar’s most prevalent solar energy option. As of September 30, 2019, Vivint Solar had installed approximately 13,460 solar energy systems under PPA contracts with New York customers.

8. Under a Purchase, a consumer purchases the solar energy system from Vivint Solar and the customer then owns the solar energy produced. The Purchase option can be financed through a loan or the consumer can pay for the system at the outset. The Purchase option became available in New York in 2016 and is Vivint Solar's second most prevalent solar energy option. As of September 30, 2019, Vivint Solar had installed approximately 701 solar energy systems under Purchase contracts with New York customers.

9. With a Lease the consumer pays to lease the solar energy system rather than pay for the energy produced by the solar panels, and like a Purchase, the consumer then owns the solar energy produced. Under a Lease, however, Vivint Solar owns the system, and the consumer pays a fee for the right to use it. The Lease option became available in New York in 2018. As of September 30, 2019, Vivint Solar had installed approximately 284 solar energy systems under Lease contracts with New York customers.

Vivint Solar's Marketing, Advertising, and Sales Practices

10. Vivint Solar primarily markets its products through door-to-door sales.

11. In door-to-door solicitations, Vivint Solar's sales personnel pitch Vivint Solar's products and provide consumers with flyers, brochures, handouts and other materials. Sales personnel may also leave handouts and other marketing materials, such as door hangers and lawn signs, at the homes of consumers with whom they do not personally interact. For purposes of this Assurance, "Sales Personnel" refers to all individuals or entities who engage with New York consumers in the marketing, advertising, promotion, or sale of Vivint Solar's products to consumers, whether or not those individuals or entities are employed directly by Vivint Solar, by "dealers", by contractors, or affiliated with Vivint Solar through some other means. In Vivint

Solar materials and documents, Sales Personnel are sometimes referred to as “sales representatives,” “sales reps,” or “sales managers.”

12. Vivint Solar also advertises on its website.

13. Vivint Solar’s marketing and advertising has, in some cases, been false, misleading, or deceptive. Such false misleading, or deceptive conduct includes misrepresentations about potential savings made by Sales Personnel, on hard copy marketing materials, and on Vivint Solar’s website.

14. Some Sales Personnel have failed to disclose that the salesperson is selling Vivint Solar’s products, instead representing that the salesperson works for the consumer’s utility, in violation of Vivint Solar’s policies.

15. Some Sales Personnel engage in high pressure sales tactics to induce consumers to sign contracts without being given an opportunity to review or fully understand the terms of the contract before they sign it.

16. Because Vivint Solar’s sales force is compensated through a commission-based structure, some of Vivint Solar’s Sales Personnel may have been incentivized to engage in such deceptive practices.

17. Although Vivint Solar has instituted a set of “Ethics Standards,” which have evolved over time, to address such behavior, those policies have not been adequately enforced and violations have continued to occur.

Representations Regarding Pricing and Savings

18. Through its marketing materials, website, and sales presentations, Vivint Solar has overstated potential savings from using Vivint Solar’s products and services. Vivint Solar advertised savings based on a comparison of energy rates charged by the consumers’ utility

companies and by Vivint Solar at 10% to 30% before February 2018 and up to 20% since February 2018.¹ Yet, the higher end of both of these rate-based savings representations were generally not attainable.²

19. During the time that Vivint Solar touted potential savings of 10% to 30% (as well as for approximately the first three months when Vivint represented that savings were up to 20%), Vivint Solar set the cost of energy for its PPAs at a rate that assumed an average cost savings of 18% across New York.³

20. In June of 2018, Vivint also introduced its “Dynamic Pricing” model. Under the Dynamic Pricing model, Vivint Solar presented a “list price” to New York consumers, (disclosed in consumers’ PPA contracts) and Sales Personnel could then offer prices below the list price. The list price, which is fixed, represents the maximum price for energy for a PPA and, as stated in Vivint’s own written policy, “is reasonably expected to provide Customers in the [region] with at least five percent (5%) energy cost savings when compared to the average utility rate generally applicable to residential consumers in the [region].” If Sales Personnel offer a PPA with an energy price below the list price, their commission is likewise reduced – the lower the price, the lower the commission.

¹ Vivint Solar also revised its Marketing and Advertising Policy in December 2019 to prohibit use of these statements, and to require that savings claims be utility-specific.

² Vivint Solar asserts that in addition to any rate-based savings, New York consumers stand to save money on the whole, if consumers are able to utilize a New York tax credit, as discussed below in paragraph 28.

³ The average anticipated savings within each region based upon Vivint Solar’s rates when compared to the average utility rate in the respective region is as follows: Orange & Rockland: 20%; Consolidated Edison: 20%; PSEG-Long Island: 15%; Central Hudson Energy: 14%; National Grid: 15%; New York State Electric and Gas Corporation: 4%

21. While Vivint Solar expected that approximately 98% of its customers would experience some rate-based savings under both pre- and post-Dynamic Pricing, Vivint Solar knew that the majority of New York consumers would not experience its advertised rate-based savings and that some consumers would experience no such savings or even have increased costs, given market realities in New York.

22. As the utility companies' energy rates fluctuated from region to region, Vivint Solar's rates in those regions did not change, resulting in higher costs for certain consumers rather than savings. For example, when the energy rates charged by New York State Electric and Gas Corporation or National Grid dropped, Vivint Solar's offered rates were sometimes higher than the utility companies' rates. Vivint Solar continued to advertise the same savings to these consumers despite the market realities.

23. In addition, Vivint Solar has failed to adequately disclose that advertised purported savings are only for the first year of contract and not over the 20-year life of the contract.

24. Although Vivint Solar has led consumers to believe that their savings will be long term, Vivint Solar does not, and cannot, know the price of energy from the consumer's power company going forward during the 20-year life of consumers' contracts.

25. Moreover, Vivint Solar's PPA contracts provide for an annual, compounding 2.9% increase in the PPA energy rate for consumers that does not vary even if the price of energy from the power company were to drop. By the end of a 20-year contract, consumers will be paying an increase of 70% above their initial PPA rate. Yet Vivint Solar does not adequately disclose this overall increase.

26. In its contracts, marketing materials and in-person communications with consumers, including during scripted welcome calls, Vivint Solar has represented that the consumer's energy rate "will not increase more than 2.9%." Such representations create the impression that the increase may be lower than 2.9% and that 2.9% is the maximum. In fact, the increase is always 2.9%. In 2018, Vivint Solar changed the statement in its contracts and in its scripted welcome calls from "will not increase by more than 2.9%" to "will increase 2.9% per year."

27. In other instances, Vivint has failed to disclose that this price increase exists at all, indicating that the rate is set or predetermined and that the amount that they pay per kWh will not change. In reality, the rate of energy will increase is set at 2.9%, compounded annually.

28. In addition to the advertised rate-based savings, Vivint Solar Sales Personnel have represented to consumers during sales presentations that they can also save money through tax credits, rebates, or incentives if they sign a contract with Vivint Solar for solar energy. New York's Solar Energy System Equipment Credit income tax credit is available to qualifying consumers using solar equipment on their property, regardless of the ownership of that equipment itself. New York consumers can deduct up to 25% of solar expenses from their income tax for 15 years, with a maximum credit of \$5,000. Vivint Solar believes that New York consumers stand to save money on the whole, and in some cases over 30% of their utility costs pre-solar, if consumers maximally utilize the New York tax credit. Yet not all consumers are able to take advantage of New York's Solar Energy System Equipment Credit income tax credit because not all consumers have sufficient income to deduct solar expenses from their income tax, particularly elderly consumers who may have limited income streams. In addition, as

discussed below in paragraph 42, Vivint Solar's contracts with consumers previously stated, inaccurately, that consumers were not eligible for any tax credits

29. Further, under a PPA or Lease, Vivint Solar, as owner of the solar panels, is the party that benefits from tax credits, rebates, or incentives, other than New York's Solar Energy System Equipment Credit. Vivint Solar's Sales Personnel failed to differentiate between federal and state benefits, and consumers have complained that Sales Personnel have represented that consumers would receive tax credits, rebates, or incentives to which they are not entitled.

Vivint Solar's Contracts and Sales

30. Vivint Solar requires consumers to enter into complex contracts to purchase or lease solar power but does not always give consumers an adequate opportunity to review their contracts before signing and currently does not automatically give consumers a hard copy of the PPA, Lease, or Purchase contract (but will do so upon request). From late 2015 through February 2019, those contracts were presented and signed on tablets or iPads which at times made the contracts difficult to review on the spot, especially in the context of door-to-door sales. Although the PPA contracts incorporate by reference a "Customer Packet," until July 1, 2018 Vivint Solar did not provide consumers with any opportunity to review the Customer Packet at the time the contract was signed; the Customer Packet was made accessible to consumers at a later date, after the PPA was signed but during a time when a customer retained the right to cancel the PPA. Since July 1, 2018, Vivint Solar has required that the Customer Packet be reviewed before the PPA is signed. Since February 2019, PPA, Lease, and Purchase contracts have been provided to customers by way of DocuSign, which involves sending the contract to the customer's email address for review and execution.

31. Consumers have alleged that during the time consumers signed agreements on a tablet or iPad, Vivint Solar Sales Personnel failed to allow them adequate time to review agreements, providing only a “summary” of the terms, and skipping directly to the signature page, which conduct Vivint Solar contends violates its current policies.

32. Consumers also allege that Vivint Solar Sales Personnel misrepresent that consumers are only signing preliminary paperwork when the consumers are, in fact, signing binding contracts, which conduct Vivint Solar contends violates its current policies.

33. Still other consumers allege that their signatures have been forged on electronic contracts or that their electronic signature was impermissibly copied from one document to another.

34. Although the contract requires the consumer’s email address for the purpose of establishing the consumer’s account, Sales Personnel have inserted their own email address and not the consumer’s, which denies the consumer the ability to access the contract and other materials.

35. Generally, Vivint Solar consumers sign PPA contracts setting a price for solar energy before Vivint Solar performs its site survey process, which includes evaluating a consumer’s home, roof, electrical systems and sun exposure to determine suitability for installing a solar energy system). After the contract is signed and Vivint Solar performs an analysis of the property (but before installation work had begun, while consumers maintained their right to cancel or terminate), Vivint Solar occasionally has required consumers to sign a new contract at a higher price. Vivint Solar’s pricing practices have shifted over time. Initially if prices were to increase because of site survey factors, (for example if the consumer’s home gets less sunlight than anticipated), Vivint Solar would cancel the contract. Subsequently, based upon the outcome

of the site survey, Vivint Solar might require the consumer to agree to a higher price. And currently, under the Dynamic Pricing model (described above in paragraph 20), Sales Personnel have the discretion to require consumers to sign a new agreement at a higher price, in order to move forward. If the site survey were to result in higher costs, Sales Personnel can leave the consumer's original price in place and accept a decreased commission from the sale, or Sales Personnel can increase the consumer's price, in which case the commission will not be negatively impacted, or could even increase. Notably, Sales Personnel can also require that a consumer pay a higher price (up to the "list price"), thereby increasing their commission, regardless of the site survey results (i.e., even if the site survey does not indicate that the rate should be higher).

36. Vivint Solar has voluntarily conducted a "pre-install survey" (until September 2015) or "welcome call" (since April 2017), which consists of a recorded phone call with a customer, in an effort to ensure that consumers' information is correct and that consumers understand the contract that they have signed. From September 2015 through April 2017, Vivint Solar did not conduct a call of this type with consumers. However, these calls generally occur in the presence of Sales Personnel and/or within the context of high pressure door-to-door sales. Welcome calls are not designed to identify instances where consumers are being coached by Sales Personnel during the call (which sometimes occurred, as revealed following investigation of complaints and as part of Vivint Solar's random audits of welcome calls, as well as NYAG's investigation into Vivint Solar's conduct), and were also not initially designed to verify, beyond asking a "yes" or "no" question, whether a consumer's information is accurate, including whether the consumer's email address, which is critical for establishing a consumer's account, and which was the subject of a "yes" or "no" question until February 2019, did not belong to the

consumer. For example, Vivint Solar's representatives performing welcome calls failed to identify some instances where Sales Personnel used his or her own email address on the consumer's account.

37. Some sales presentations were conducted in Spanish, yet Vivint Solar did not provide consumer with corresponding contracts and documents in Spanish, as required by New York Personal Property Law § 428 and 16 CFR § 429.1.

38. Some Vivint Solar Sales Personnel have sold products and services to elderly consumers, who may be more vulnerable to the pressures of door-to-door sales, and who may lack the sophistication to understand complex contracts, including that the contracts are binding for 20-years, a term that will exceed the lives of many of the elderly consumers, and will become a liability of the estate.

39. Some elderly consumers have complained that they are not comfortable transacting business in purely electronic form, including reviewing documents on a tablet or iPad, receiving necessary documentation electronically, reviewing and paying bills electronically, and even sending and receiving email.

40. Because Vivint Solar's practice is to transact business electronically, consumers do not automatically receive hard copies of contracts and other documents referred to in the contract (but may request hard copies). As a result, some consumers have failed to receive copies of executed contracts, in violation of New York law, Personal Property Law Article 10-A. Vivint Solar's emails containing contracts may not reach consumers for a variety of reasons, including typos in entering email addresses, email servers' spam filters, technical glitches, or malfeasance by Sales Personnel as described above. Vivint Solar further creates obstacles for consumers to receive hard copy contracts and other necessary documents by including references

to fees for requested documents in its contracts (though Vivint Solar does not charge fees to provide a hard copy of a PPA, Lease or Purchase contract).

41. Under New York law, Personal Property Law § 428, contracts must contain duplicate copies of a “notice of cancellation” form, which the consumer may use to cancel the contract by mailing or otherwise delivering a signed copy of the notice of cancellation. Vivint Solar has, in some instances, violated the law which has made it difficult for consumers to exercise their cancellation rights.

42. Additionally, until November 2018, the terms of Vivint Solar’s contracts with consumers inaccurately stated that Vivint Solar owns all the “credits, rebates, incentives, allowances, tax benefits. . . that are attributed, allocated, or related to the System, the Energy, or environmental attributes thereof,” thereby creating the impression that consumers are not entitled to New York’s Solar Energy System Equipment Credit income tax credit if they are using solar equipment on their property, regardless of the ownership of that equipment. However, as discussed above in paragraph 28, this tax credit is actually not tied to ownership of the equipment but its use. On October 16, 2018, Vivint Solar submitted to the NY Department of Public Service – Public Service Commission (the “PSC”) proposed revisions to the PPA contracts clarifying the inaccuracy regarding New York’s Solar Energy System Equipment Credit, which changes were approved by the PSC in late November 2018. Since March 2018, Vivint Solar’s PPA has included a description of the New York Solar Energy System Equipment Credit as part of an exhibit, entitled “New York Disclosures.

Solar Panel Installation, Operation, and Maintenance

43. As alleged above, Vivint Solar has generally required consumers to sign contracts before performing a site survey.

44. Vivint Solar has also failed to inspect some consumers' roofs to ensure that they are fit for the installation of solar panels before consumers sign contracts. When roof inspections do happen post-contract signing, at times the inspections are not adequate to ensure that consumers' roofs are fit for solar panel installation. As a result, in some cases, Vivint Solar installs solar panels on roofs that lead to damage to consumers' roofs and other parts of their homes.

45. Some consumers have complained about damage to their property caused by the installation process itself, including damage to consumers' roofs and other parts of the home and leaks and water damage resulting from faulty installation.

46. Some consumers further complained that Vivint Solar fails to timely remedy damage it has caused or remove solar panels to allow consumers to make repairs, delays inspection and repair, and disavows responsibility for damage.

47. In some cases, Vivint Solar's solar panel systems have not functioned properly. Solar energy systems have either produced less energy than intended by Vivint Solar's system design or have not produced any energy at all.

48. Some consumers have complained that Vivint Solar fails to adequately operate and maintain solar energy systems, including by and failing to monitor systems that are not functioning appropriately and producing less energy than intended or producing no energy at all, as well as by failing to timely remedy systems that are not functioning appropriately.

49. Over the course of a 20-year contract with Vivint Solar, there is a high likelihood that a given roof will need repairs. Vivint Solar fails to give consumers sufficient information about additional costs that they will almost certainly incur when the time comes to remove and replace the solar panels.

Other Deceptive Practices

50. Some Vivint Solar Sales Personnel utilize referrals from existing customers, for which referring customers may be paid a referral fee if new customers sign contracts with Vivint Solar and end up with systems installed on their homes, but do not always pay promised referral fees.

51. Some consumers have alleged that Vivint Solar has overbilled them by i) billing them for solar energy even when the consumer's solar energy system is offline, and the consumer is not receiving any solar energy from Vivint Solar and ii) charging consumers rates for energy that are higher than the rate dictated by contract.

52. Consumers allege pervasive customer service deficiencies.

53. Among other things, consumers experience significant delays and hold times when calling Vivint Solar.

54. When such consumers reached a Vivint Solar representative, they were often transferred between representatives and given misinformation or contradictory information.

55. Representatives often failed to call consumers back as promised. When representatives do eventually call consumers back or when consumers follow up themselves, consumers often have to start from scratch, as the customer service representatives have inadequate information about individual consumer's issues or no information at all.

56. Consumers often cannot get Vivint Solar to timely schedule repairs or maintenance, including temporarily removing solar panels to perform roof repairs, and have at times encountered complete non-responsiveness from Vivint Solar regarding complaints and issues.

57. NYAG finds that Respondents' practices as described in paragraphs 1 – 56 constitute repeated violations of New York Executive Law § 63(12); New York General Business Law § 349; New York General Business Law § 350; New York Personal Property Law, Article 10-A; and 16 CFR § 429.

58. Vivint Solar neither admits nor denies the Attorney General's findings in paragraphs 1 – 56.

59. Vivint Solar has cooperated with the Attorney General's investigation and has made a number of changes to address some issues of concern to the NYAG.

60. Vivint Solar has agreed to this Assurance for the purpose of resolving this Investigation and to avoid the time, expense, and distraction of litigation.

61. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of New York Executive Law § 63(12); New York General Business Law § 349; New York General Business Law § 350; New York Personal Property Law, Article 10-A; and 16 CFR § 429.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

62. This Assurance shall apply to Vivint Solar and its officers, directors, servants, agents, employees, assignees, and any individual, subsidiary, division, parent, affiliate, as well as any successors-in-interest. The relief set forth below applies to consumers in New York state.

Prohibited Practices

63. Vivint Solar shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to New York Executive Law § 63(12); New York General Business Law § 349; New York General Business Law § 350; New York Personal Property Law, Article 10-A; and 16 CFR § 429, including but not limited to:

- a. Misrepresenting the savings consumers will achieve through any solar option provided by Respondents;
- b. Misrepresenting that Vivint Solar's per kWh price for electricity will be lower than a consumer's current rates, or that a consumer's monthly electric bill will be lower after installation of a Vivint solar energy system, savings if such is not the case;
- c. Misrepresenting that a consumer can realize a certain percentage of cost savings except to the extent such cost savings is reasonably expected based upon a comparison by Vivint Solar of its electricity prices under the applicable Contract compared to a consumer's current electricity costs;
- d. Failing to clearly and conspicuously disclose that advertised savings are limited to the finite period of one year and do not reflect savings over the life of a PPA, Lease, or Purchase;
- e. Misrepresenting the actual cost of solar energy under a PPA over the life of the contract including by indicating that the rate will not increase or that it will not increase more than a specified amount when there is a set annual, cumulative price increase for the life of the contract;
- f. Misrepresenting the tax benefits available;

- g. Conducting sales presentations or negotiations in a language that is different from the contract provided to the consumer;
- h. Failing to give consumers an opportunity to read and review contracts before signing the contracts;
- i. Inducing consumers to sign contracts by misrepresenting that the document being signed is paperwork other than the contract itself;
- j. Asking or requiring customers to agree to a higher price after they sign a PPA, Lease or Purchase contract (nothing about this prohibition will prevent Vivint Solar from reducing the price per kWh for a particular customer after a PPA contract is signed);
- k. Within 90 days of the effective date of this Assurance, entering into a contract for purchase or lease of solar panels unless and until Vivint Solar has obtained information about the condition of the roof from the customer and satellite imagery in order to make a preliminary determination of roof fitness;
- l. Forging or otherwise manipulating consumers' signatures;
- m. Within 60 days of the effective date of this Assurance, failing to provide consumers with hard and electronic copies of the "Notice of Cancellation" after contracts are countersigned by Vivint Solar;
- n. Charging consumers for solar energy at a higher rate than provided for by contract;

- o. Charging consumers for solar energy when the consumer's solar energy system is offline or disconnected or the consumer is not otherwise receiving solar energy, provided that Vivint Solar may charge a consumer on an estimated basis during the period of time set forth below in paragraph 64.m;
- p. Failing to monitor, operate, and maintain consumers' solar energy systems;
- q. Failing to schedule temporary solar panel removal in a timely manner after receiving a request for removal.

Affirmative Obligations

64. Vivint Solar shall ensure compliance with relevant New York and federal law, and Vivint Solar's own policies and procedures, including without limitation the Ethics Standards. Vivint Solar will additionally engage in the following practices, to be implemented no later than 90 days of the effective date of this Assurance:

- a. If Vivint Solar provides any representation to a consumer about savings under a solar contract then Vivint Solar will ensure that i) such representations are based on savings that average consumers are likely to achieve in the region where the consumer's home is located ii) all verbal representations to consumers concerning savings disclose the basis of all claims and calculations; and iii) all written representations concerning savings disclose all material assumptions and estimates used in calculating such savings projection; and iv) where savings are based in whole or in part on the consumer's receipt of New York's Solar Energy System Equipment Credit income tax credit, disclose the maximum tax credit that consumers could utilize based upon their anticipated solar expenses and that

consumers should consult with an accountant or tax professional to understand their eligibility for the tax credit.

- b. Clearly and conspicuously disclose to consumers in sales presentations, marketing materials, and in their contracts information about the likelihood that it will be necessary to temporarily remove panels during the 20-year life of the contract, including the range of potential costs for temporary panel removal and replacement at each stage during the life of the contract, and a rate chart of costs within the contract itself.
- c. Clearly and conspicuously disclose to consumers in sales presentations and in their contracts the tax savings/rebates for which they are eligible and provide copies of the relevant tax forms and instructions. For those consumers with existing contracts with Vivint Solar, Vivint Solar shall notify consumers via both US mail and email of their rights to receive New York State tax credits and provide the relevant tax forms and instructions. Vivint Solar will also establish a designated hotline to provide information to New York consumers regarding the New York State tax credit.
- d. Provide the Customer Packet as an exhibit to the contract, thereby discontinuing the practice of providing the Customer Packet separately from the contract and allowing the consumer the opportunity to review the Customer Packet at the same time as the rest of the contract.
- e. For door-to-door sales, offer for consumers to review a hard copy of the relevant PPA, Lease, or Purchase contract (provided by the sales representative) before signing the contract through DocuSign or equivalent.

- f. Require that the PPA, Lease or Purchase contract be signed on a device owned and controlled by the consumer.
- g. Modify the statement required by Personal Property Law § 428(a) that is currently included in Vivint Solar PPA, Lease and Purchase contracts to describe means other than delivery of a hard copy of the notice of cancellation form required under Personal Property Law § 428(b) by which Vivint Solar will accept notice of cancellation from a customer, such as by email, hand-delivery, or orally on the telephone.
- h. Ensure that contracts provided to consumers through DocuSign or equivalent may be printed.
- i. Review and either reject or countersign PPA, Lease, or Purchase contracts within 2 business days after a consumer signs the contract, and if countersigned, mail a courtesy copy of each PPA, Lease, or Purchase contract by regular mail to each consumer within 2 business days of countersignature. If a contract is rejected, ensure consumer is notified within 2 business days of rejection.
- j. Continue existing practice of giving PPA and Lease consumers an extended right to rescind their PPA and Lease contract, and Purchase customers a right to terminate their Purchase contract, until work associated with installing a solar energy system on a consumer's home begins, and ensure that this right is never less than five (5) business days from the date that the consumer signed the contract.

- k. For those consumers with existing contracts with Vivint Solar, Vivint Solar shall provide the option to receive a hard copy of the consumer's contracts and supporting documents free of charge.
- l. Provide consumers with a rate chart indicating the cost that the consumer will pay per kWh for each of 20 years of a PPA contract during the sales presentations and incorporate the chart into the contract.
- m. Reach out to consumers within 2 business days of determining that a consumer's solar energy system is not communicating data and/or is not producing energy, to inform the consumer of the issue and try to resolve it; if the issue cannot be resolved during the initial communication with the consumer (such as troubleshooting an internet connectivity issue), further investigate the issue remotely and, if possible, determine the basis of the issue, and communicate the determination to the consumer within 5 business days of initial communication; and address the issue within 5 business days of determining the basis of the issue.
- n. Permit consumers who were 70 years of age or older at the time they entered into a PPA or Lease contract, including their representatives or their estates if a consumer has died, to cancel their contracts with repayment of all money paid to Vivint Solar, without penalty, in the event that the consumer was vulnerable at the time of the sale and the sales representative employed deceptive tactics. The NYAG shall be the final arbiter of any dispute under this paragraph and of any appropriate relief.
- o. Train Sales Personnel and create guidelines for customer service representatives performing welcome calls to avoid taking advantage of consumers and prevent its

occurrence and to ensure all consumers, including elderly consumers, understand the contracts, including the fundamental nature of the contract (e.g. paying for power under a PPA, leasing equipment under a lease, and buying a system under a Purchase contract), the price the consumer will pay, the basis for any advertised savings (including the benefit of New York State income tax credits), the duration of the contract, and confirmation that Vivint Solar and Sales Personnel are not affiliated with a utility.

- p. Ask consumers who are 70 years of age or older whether they would like to include anyone else to participate in the sales presentation.
- q. Only solicit consumers known to be 70 years of age or older between 9:00 AM and sunset.
- r. Cease a solicitation if at any point during a solicitation, a consumer indicates that he or she is not interested in Vivint Solar's products and services, and designate consumers who have previously indicated that they are not interested in Vivint Solar's products and services as "Do Not Contact" in the Company's CRM.
- s. Clearly disclose as part of every sales presentation the duration of contract being offered to a consumer.
- t. Verify that email addresses listed for consumers belong to them and are functional by sending a confirmation email to the consumer and including dual authentication protocol.
- u. Perform "welcome calls" (or any similar communication with consumers) outside of the presence of Sales Personnel, and during the welcome calls i) require that consumers provide their name, address, and phone number, rather than providing

consumers with the information for verification (similar to Vivint Solar's current practice with respect to customer's email address, which Vivint Solar shall continue); ii) confirm that consumers have received copies of the contract and all relevant documents; iii) ask consumers whether representations of savings were made by Sales Personnel, and if so, what representations were made; iv) correct any misrepresentations by providing accurate information; v) ask consumers about whether they have any concerns with the contract itself or the decision to enter into a 20-year agreement with Vivint Solar; and vi) provide consumers with the opportunity to ask any questions that they may have. Vivint Solar shall give consumers the option to cancel the contract during the welcome call.

- v. Train customer service representatives performing welcome calls to identify signs of consumer confusion or deception or unfair treatment, such as described in this Assurance, and institute appropriate remedial measures, including cancelling the account and taking appropriate disciplinary action against Sales Personnel that have engaged in deceptive or unfair treatment of consumers.
- w. When consumers complain to Vivint Solar about damage, Vivint Solar shall use best efforts to resolve and repair any damage, at Vivint Solar's expense, and if there is a dispute, then Vivint Solar shall use independent third-party contractors to evaluate alleged damage, Vivint Solar's responsibility for the damage, and the cost of repairing the damage, at Vivint Solar's expense. Vivint Solar shall provide evidence of these contractors' independence from Vivint Solar as set forth below in paragraph 73.e.

- x. Where the independent contractor determines that Vivint Solar is responsible for damage, or if Vivint Solar accepts responsibility, Vivint Solar will cover the cost of repair and the cost of temporary removal and replacement of solar panels.
- y. Temporarily remove solar panels to facilitate necessary roof repair within 3 business days in the event that emergency repairs are needed, for both current and future consumers.
- z. Revise customer service protocol including by doing the following:
 - i. Ensure that customer service phone number – 877.404. 4129 – has sufficient staff to timely handle reasonably anticipated call volume such that expected hold times will generally not exceed fifteen (15) minutes except in unusual or unforeseen circumstances.
 - ii. Record all calls between customer service representatives and consumers for subsequent audit and conduct additional review in the event that there is a problem or complaint raised by a customer, and inform customers that recordings of such calls are available upon request.
 - iii. Provide accurate hold times for consumers and give the option for the consumer to receive a call back without losing his or her position in line rather than waiting on hold.
 - iv. Require customer service representatives to record in a customer contact log information about the call such that subsequent representatives can continue to service the consumer’s needs in an efficient manner.
 - v. Require that follow up communications to consumers occur on or before the date represented to the consumer, which shall not be longer than two

business days from the date of the prior communication. For every day beyond that timeframe, the consumer shall receive a credit equivalent to 1/30th of the amount billed to that consumer during the prior month, but no less than \$5.00, on his or her bill during each of those days.

- vi. Require that customer service representatives review consumers' files before returning calls in order to be prepared to address consumers' issues.
- vii. Provide designated customer service representatives to respond to technical issues or complaints.
- viii. Provide designated customer service representatives to respond to complaints about customer service.

65. Within 90 days of the effective date of this Assurance, Vivint Solar shall modify its contracts as appropriate to conform to its obligations under this Assurance.

66. Respondents shall conduct regular internal reviews to ensure compliance with this Assurance and Vivint Solar's own policies and procedures and will take appropriate action if it identifies violations of this Assurance or Vivint Solar's own policies and procedures, including taking disciplinary action against personnel and providing appropriate remediation for consumers, such as cancellation of contracts and reimbursements of payments. Such internal reviews include performing quarterly audits of the following, as well as subsequent investigation as outlined below:

- a. The representations made to consumers by Sales Personnel by reviewing a random sample of at least 10% of available information about sales presentations (e.g., information about when Sales Personnel identified and prescreened a consumer, first contacted and spoke with a consumer, whether certain information

was presented to a consumer, when a consumer reviewed and signed certain documents, and the recorded welcome call) and through follow-up communications with the corresponding consumers by an audit team regarding the content of sales presentations. In the event that a random sample audit indicates activity by Sales Personnel that is not in compliance with this Assurance or Vivint Solar's own policies and procedures, Vivint Solar shall further investigate a random sample of 10% any identified Sales Personnel's contracted consumers. If the subsequent investigation indicates additional instances of noncompliant activity, Vivint shall expand its investigation to include an investigation of all contracted consumers for that Sales Personnel.

- b. Consumers' customer service experiences by reviewing a random sample of at least 10% of customer accounts to ensure compliance with the provisions set forth in paragraph 64.z., including that hold times are accurate and that consumers receive prompt responses from customer service representatives, as well as ensuring that customer service representatives respond substantively and appropriately to consumer complaints. In the event that a random sample audit indicates activity by a customer service representative that is not in compliance, Vivint Solar shall further investigate a random sample of 10% consumer interactions with the identified customer service representative. If the subsequent investigation indicates additional instances of noncompliance, Vivint shall expand its investigation to include all of consumer interactions with that customer service representative.

- c. Welcome calls by reviewing at least 10% of calls in order to ensure compliance with Vivint's own policies and procedures, including the obligations outlined in paragraph 64.u. In the event that a random sample audit indicates that a representative performing welcome calls has not sufficiently perform his or her duties, Vivint Solar shall further investigate a random sample of 10% of that representative's welcome call recordings. If the subsequent investigation indicates additional instances where a representative has not sufficiently performed his or her duties, Vivint Solar shall further investigate all of that representative's welcome calls. If the review of any welcome call indicates activity by Sales Personnel that is not in compliance with this Assurance or Vivint Solar's own policies and procedures, Vivint Solar shall follow the procedure for further investigation in (a), above.

Consumer Redress

67. Consumers shall be eligible to receive a refund of all amounts paid to Vivint Solar and to cancel their contract prospectively (which includes removing the system and restoring the consumer's roof to a good and watertight condition) if one or more of the following circumstances occurred:

- i. The consumer did not sign the contract with Vivint Solar, the consumer's signature was forged, or the consumer's electronic signature was copied from another place to the contract.
- ii. The sales presentation was in a language different from the language of the contract and supporting documents.

- iii. For electronic contracts, an email address other than an address provided by the consumer was used on the consumer's account.
- iv. The consumer was induced into signing a contract with Vivint Solar by Sales Personnel who misrepresented the nature of the contract, or otherwise acted in a deceptive or fraudulent manner.

68. Where consumers allege that Vivint Solar damaged their property during installation of solar panels, Vivint Solar shall: (i) use best efforts to resolve and repair the damage, at Vivint Solar's expense, including removing the system and restoring the consumer's roof to a good and watertight condition (where necessary) and (ii) if there is a dispute, then Vivint Solar shall engage an independent third party contractor to evaluate the alleged damage, Vivint Solar's responsibility for the damage and the cost of repairing the damage, at Vivint Solar's expense. In the event that Vivint Solar caused or partially caused the damage, then Vivint Solar will cover the cost of temporary removal and replacement of the solar energy system, and the cost of repairing the damage. Vivint Solar shall provide evidence of these contractors' independence from Vivint Solar as set forth below in paragraph 73.e.

69. Within 30 days of the effective date of this Assurance, Vivint Solar shall provide written notice and claim forms in a form approved by the NYAG to all of its customers in New York with a contract with Vivint Solar notifying them of this Assurance and the grounds for consumer redress set forth in paragraphs 67 and 68. Claim forms must be submitted within six months of the date of such notice.

70. Within 30 days of receiving a consumer's completed claim form demonstrating the consumer's eligibility under paragraph 67, Vivint Solar shall provide a refund and cancel the consumer's contract. Within eight months of the date of the notice in paragraph 69, Vivint Solar

shall provide a summary of all received claim forms along with outcomes, as well as copies of the claim forms themselves. The NYAG shall be the final arbiter of any dispute as to the consumer's eligibility under paragraph 67. In the event that Vivint Solar discovers, whether through the audit process or otherwise, instances where the circumstances enumerated in paragraph 67 occurred, Vivint Solar shall provide redress consistent with paragraph 67.

71. Within 60 days of receiving a consumer's completed claim form alleging that that Vivint Solar damaged the consumer's property during the installation of solar panels pursuant to paragraph 68, the Contractor shall make its assessment concerning Vivint Solar's liability for the damage. Vivint Solar shall timely pay the cost of removal, replacement, and repair, as appropriate. Within nine months of the date of the notice in paragraph 69, Vivint Solar shall provide a summary of all received claim forms along with outcomes, as well as copies of the claim forms themselves. The NYAG shall be the final arbiter of any dispute as to Vivint Solar's liability under paragraph 68.

72. Where subsequent to the signing of a contract, Sales Personnel have increased a consumer's cost of energy above the rate on the initial contract, Vivint Solar shall provide such a consumer with an amended contract with a new rate that is lower than the initial rate by the amount of the difference between the initial rate and the subsequent increased rate, and provide the consumer with credits to adjust the rate for the energy that the consumer has already paid to the new rate.

Compliance

73. At twelve (12) months from the effective date of this Assurance, and ever twelve (12) months thereafter, for a period of five (5) years, Respondents shall file with the NYAG a report, under penalty of perjury, setting forth in detail the manner and form in which it has

complied with this Assurance (a “Compliance Report”). This Compliance Report shall be signed by Vivint Solar’s Chief Legal Officer. The Compliance Report shall contain, but not be limited to, the following:

- a. all current versions of training materials, policies, and guidelines for Sales Personnel or customer service representatives, indicating any changes from previous training materials, policies and guidelines;
- b. all new advertisements or marketing materials, whether electronic or print, including the content of Vivint Solar’s website;
- c. substantiation and analyses to support all advertised claims or approved claims made by sales representatives regarding consumer savings;
- d. summaries of each complaint from a New York consumer as well as steps taken to investigate, address, and resolve the complaint. “Complaint” means what it is understood to mean in common parlance, and includes any dispute, claim of wrongdoing, expression of dissatisfaction, or request for relief relating to any alleged harm or failure with respect to a New York consumer;
- e. copies of independent contractor agreements for third party contractors;
- f. a description of any disciplinary or remedial actions taken with respect to any New York Sales Personnel or customer service representative for violation of the provisions set forth in this Assurance and Vivint Solar’s policies and procedures associated with interactions with consumers; and

- g. a description of any remediation for consumers or other action taken based upon Vivint Solar’s identification of violations of this Assurance, including violations of the Prohibited Practices and Affirmative obligations set forth in paragraphs 63 – 66, the identification of violations of its own relevant policies and procedures, and/or the circumstances enumerated in paragraph 67.

Penalties, Costs, and Restitution resulting from the Investigation

74. In consideration of the making and execution of this Assurance, Respondents shall pay to the State of New York \$1.95 million dollars in penalties, costs, and restitution. Payment shall be made as follows: \$1 million dollars on or before January 15, 2020, \$475,000 on or before three (3) months from the effective date of this Assurance, and a final payment of \$475,000 on or before six (6) months from the effective date of this Assurance. Restitution shall be distributed by the NYAG in a manner determined by the NYAG to be appropriate.

75. Payments shall be made by wire transfer, ACH transfer, attorney check, corporate or certified check, or bank draft, which shall be made payable to the “State of New York”, and shall reference Assurance No. 19-161; payments shall be addressed to the attention of Jason L. Meizlish, Assistant Attorney General, State of New York, Office of the Attorney General, Bureau of Consumer Frauds and Protection, 28 Liberty St., New York, NY 10005.

MISCELLANEOUS

76. The NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to the NYAG by the Respondents and their counsel and the NYAG’s own factual investigation as set forth in Findings, paragraphs 1 – 56 above. The Respondents represent and warrant that neither they nor their counsel have made any material representations to the NYAG that are inaccurate or misleading. If any material representations

by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

77. If the Assurance is violated, voided, or breached, Respondents agree that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is violated, voided, or breached, Respondents expressly agree and acknowledge that this Assurance shall in no way bar or otherwise preclude the NYAG from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Assurance, against Respondents, or from using in any way any statements, documents or other materials produced or provided by Respondents prior to or after the date of this Assurance. Any action or proceeding must be adjudicated by the courts of the State of New York, and Respondents irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

78. In the event that the Assurance is violated, voided, or breached, Vivint Solar shall be entitled to notice of and the opportunity to cure the alleged violation on one occasion, as follows. The NYAG will notify Vivint Solar of the alleged violation prior to taking any legal action, and Vivint Solar shall have thirty (30) days (“Cure Period”) to cure the violation and provide the NYAG with a detailed written explanation of the corrective actions taken. Vivint Solar shall not, however, be entitled to notice and an opportunity to cure an alleged violation on more than one occasion or if the NYAG determines in good faith that a threat to the health, safety, or welfare of the public requires immediate action. In the event of a violation that Vivint Solar has not cured within the Cure Period or that Vivint Solar is not entitled to the opportunity to cure, NYAG reserves the right to take any action it deems appropriate.

79. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondents in agreeing to this Assurance.

80. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondents shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Respondents' (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party. This Assurance should not be construed as an admission of liability by Respondents.

81. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

82. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the NYAG.

83. It is understood and agreed that this Assurance shall apply to Respondents, whether acting through their respective directors, officers, employees, representatives, agents, assigns, successors, affiliates, subsidiaries, or other business persons or business entities whose acts, practices, policies are directed, formulated, or controlled by Respondents.

84. Nothing in this Assurance shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

85. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

86. The Parties agree that nothing in this Assurance shall create any private rights, causes of action, third party rights or remedies of any other individual entity against Respondents or any of their affiliates.

87. To the extent not already provided under this Assurance, Respondents shall, upon request by the NYAG, provide all documentation and information necessary for the NYAG to verify compliance with this Assurance.

88. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 19-161, and shall be in writing and shall be directed as follows:

If to the Respondents, to: Steven D. Burt (steven.burt@vivintsolar.com), or in his absence, to the person holding the title of Chief Legal Officer.

If to the NYAG, to:

Office of the Attorney General of the State of New York
Bureau of Consumer Frauds and Protection
28 Liberty Street, 20th Floor
New York, NY 10005
Attn: Jason L. Meizlish, Assistant Attorney General

or in his absence, to the person holding the title of Bureau Chief, Bureau of Consumer Frauds and Protection.

89. Acceptance of this Assurance by the NYAG is not an approval or endorsement by NYAG of any of Respondents' policies practices or procedures, and the Respondents shall make no representation to the contrary.

90. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the NYAG against Respondents.

91. If a court of competent jurisdiction determines that the Respondents have violated this Assurance, Respondents shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs. Any failure by the NYAG to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondents.

92. Nothing contained herein shall be construed to limit the remedies available to the NYAG in the event that the Respondents violate the Assurance after its effective date.

93. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

94. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

95. This Assurance is not intended for use by any third party in any other proceeding.

96. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

97. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

98. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

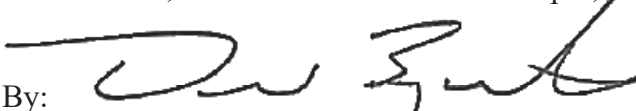
99. The effective date of this Assurance shall be January 6, 2020.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: Jane M. Azia
Jane M. Azia
Bureau Chief
Bureau of Consumer Frauds and Protection
212-416-8727

By: Jason Meizlish
Jason L. Meizlish
Assistant Attorney General
Bureau of Consumer Frauds and Protection
212-416-8455

Vivint Solar, Inc. and Vivint Solar Developer, LLC

By: 

David Bywater
Chief Executive Officer