**OPERATING AGREEMENT**

**for Member-Managed**

**[Name of Entity] LLC[[1]](#footnote-1)**

**INTRODUCTION**

This Operating Agreement (“Agreement”) is made and entered into by and between [Name of Entity] LLC (“Company”) and the undersigned as an initial member (“Member”) of the Company as set forth in the Business Purpose and Members herewith.

The undersigned hereby adopt the following Agreement and, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, and intended to be legally bound hereby, the undersigned parties agree as follows:

**DEFINITIONS**

Capitalized terms used herein, but not otherwise defined, shall have the following meanings:

“Environmental Attributes” means the characteristics of a plant that enable the energy it produces to qualify as renewable energy and include any and all benefits of the plant to the environment, such as avoided emissions or other impacts on air, water, or soil that may occur through the plant’s displacement of a non-renewable energy source as defined by Vt. Stat. Ann. tit. 30 § 8002(7).

“Land Lease” means the land lease agreement made and by and between \_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”) with an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the Company as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [date].

“Member” means the person or persons associated with and responsible for a membership share of the Solar Facility, a metered account with the Utility, and owns a panel or multiple panels of the Solar Facility.

“Member Meters” means all electricity Meters of the Member that are identified as a Member Meter in Exhibit “A” unless the Member and the Company agree to include additional meters.

“Net Metering” means measuring the difference between the electricity supplied to a customer and the electricity fed back by a net metering system during the customer’s billing period.

“Net Metered Customer” means a Vermont electric consumer who receives net metered energy from the Solar Facility, including the Owner.

“Output” means all of the electricity the Solar Facility produces, delivered to the Utility and allocated to the Member Meters, measured in kilowatt hours.

“Owner” means the owner of the land upon which the Project is sited.

“Pro-Rata Ownership” is defined as the rated DC output of the solar panels owned by the Member as a percentage of the total rated DC output of the solar array.

“Renewable Energy Credits (REC)” mean all “tradeable renewable energy credits” as defined in Vt. Stat. Ann. tit 30 § 8002(26) associated with a single unit of energy that the Solar Facility generates.

“Services” means any and all of the services the Company provides the Member pursuant to this Agreement.

“Site” means any and all real property in which the Company installs and constructs the Solar Facility.

“Solar Facility” shall have the meaning given to such term in the Background and shall include all equipment, facilities, and materials, including photovoltaic arrays, DC/AC inverters, wiring and other components included therein. The System excludes any part of the Members’ existing electrical systems that are owned or leased, operated, maintained and controlled by the Member, and interconnected with the Utility. See Exhibit “A.”

“Turnkey” means that the Developer will install and construct the Solar Facility such that upon completion the Solar Facility will be generating electricity and Net Metering Credits.

“Unbundled” means RECs that are sold separately from the unit of renewable energy.

“Utility” means the retail electric company serving the Member.

**BACKGROUND**

1. The parties are organizing and operating a limited liability company, subject to the conditions in this Agreement, for the purpose of managing a net metered community solar electric facility (“Solar Facility”). See Exhibit “A.”
2. The Members own the Solar Facility pursuant to the conditions of this Agreement.
3. The Solar Facility is intended to offset Members’ electric bills and reduce carbon emissions from the State of Vermont.
4. The parties have agreed to make certain payments to the Company in order to pay for the Solar Facility’s operating expenses.

**ARTICLE I. ORGANIZATION**

Name: The name of the Company is [Name of Entity] LLC.

Formation: The Company was granted Articles of Organization as a Limited Liability Company by the Office of Secretary of State, State of Vermont, effective [Month, Day, Year]. The rights and obligations of the Members and the Company shall be as provided under the Articles of Organization and this Agreement.

Principal Office: The principal office of the Company shall be such address as may be designated from time to time by its Members or their representative officers.

Purpose of Formation: The Company is organized to develop, install, operate, and manage the solar array and to do any and all things necessary, convenient, or incidental to that purpose.

Initial Registered Agent and Office: The name and address of the initial registered agent of the Company shall be [Name of Agent], [Address of Agent].

**ARTICLE II. BUSINESS PURPOSE**

Business Purpose: The purpose of [Company] is to serve as an entity that represents the common interests of its members in managing certain administrative and financial matters in connection with their separate acquisition of solar panels from [Developer] or another company.

The Company will develop a solar photovoltaic array of [capacity in kW) (“Project”) in which Members separately purchase and own their solar panels. Initial members of the Company are those who buy into a “turnkey” system of solar panels and its components, including installation, permitting and monitoring, from [Developer]. The electricity production of the solar panels in the Project is or will be fed into the [Name of Utility] (“Utility”) grid. The Utility issues or will issue credits on a pro-rata basis to Members’ meters via net metering to offset Members’ electric use and to the landowner of the Project site as land lease payments.

**ARTICLE III. MEMBERS**

Members: Members of [Company] are owners of their solar panels and a percentage of the Project.

Initial Members: The names, addresses and emails of the initial Members are listed in Exhibit B.

Liability of Members: No Member shall be liable, responsible, or accountable, in damages or otherwise, to any other Member or to the Company for any act performed by the Member with respect to Company matters, except for fraud, gross negligence, or an intentional breach of this Agreement.

The Company and each Member shall each defend, save harmless, and indemnify the other from and against any claim, proceeding (whether legal or administrative), and expenses that are related to this Agreement and that are (i) caused by an act or omission of the indemnifying party or (ii) sustained on or caused by equipment or facilities, or the use thereof, that the indemnifying party owns or controls.

Each party agrees to waive any claim against the other for indirect, incidental, consequential, or punitive damages. Neither the Company nor any Member shall be liable to the other for, or as a result of, any proceeding in which rates are reviewed or established for either party by the Public Service Board or similarly authorized entity. In no event shall the Company be liable under this Agreement if the Solar Facility fails to generate electricity or Net Metering Credits, as a result of the Company failing to obtain or maintain any necessary permit, license or governmental approval, or for any error or omission in any filing or instructions submitted by or on behalf of the Company, when acting as the Administrator of the Group Net Metering Arrangement to the Utility or any governmental entity.

The debts, obligations and liabilities of the Company, a limited liability company, are solely the debts, obligations and liabilities of the Company. A Member or manager is not personally liable for any debt, obligation or liability of the Company solely by reason of being or acting as a Member or manager. (Vermont Statutes Annotated, Title 11 Section 3043(a-b)).

**ARTICLE IV. MANAGEMENT**

Member-Managed: The [Company] will be a member-managed limited liability company. As such, the management of the Company will be vested in the Members pursuant to 11 V.S.A. § 3054(a). Each Member has equal rights in the management and conduct of the Company’s business, and any matter relating to the business of the Company may be decided by a majority of the Members. Each Member will have one (1) vote regardless of the number of panels or other assets owned.

General Powers: Members, acting together on behalf of the Company, shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated. Excluding the power to enter into real property contracts, Members have the power to make all decisions affecting such business and affairs, including, without limitation, the power to:

1. Contract for liability and casualty insurance on the Project.
2. Administer the payment of applicable state or other tax obligations on the Project.
3. Administer the collection from Members of annual operating expense fees and the payment of such amounts due for tax, insurance, maintenance, service and other operating costs of the Project.
4. Coordinate net metering and other arrangements with the Utility.

Representative Management: Members shall appoint a board of officers to serve as their representative management and the following provisions shall apply:

1. Officers: The officers shall act in the name of the Company and shall supervise its operation under the direction and management of the Members, as further described below. The officers of the Company initially shall consist of a registered agent who is the presiding officer, a treasurer, and a secretary, and/or other officers or agents as may be elected and appointed by the Members.
2. Election and Term of Office: The officers of the Company shall be elected annually by the Members by a majority vote. The Members of the Company shall have the right to replace the officers of the Company at any time during the year in the event of the relocation, illness, or death of an officer, or for any reason that may come up, for the term determined and by a majority vote.
3. Authority: The initial registered agent, treasurer, and secretary may act for and on behalf of the Company and shall have the power and authority to bind the Company in all matters pertaining to the ordinary course of business. Any matters outside the ordinary course of business must be approved by a majority of the Members.
4. Treasurer: The treasurer shall be the chief financial officer of the Company. The treasurer shall not be required to give a bond for the faithful discharge of his/her duties. The treasurer shall: (i) have charge and custody of and be responsible for all funds and securities of the Company; (ii) receive and give receipts for moneys due and payable to the Company from any source whatsoever, and deposit all such moneys in the name of the Company in such banks, trust companies, or other depositories as shall be authorized by Members of the Company; (iii) administer the collection from Members of annual operating expense fees and the payment of such amounts due for tax, insurance, maintenance, service; and (iv) in general perform such other duties as from time to time may be assigned by the Members. Prior to paying the cost of operating expenses, the Treasurer shall annually assess and assign a per kW subscription charge to Members. The Treasurer shall begin collecting these expenses as soon as kW generation from the Facility is fully subscribed.
5. Secretary: The secretary shall: (i) be custodian of the Company records; (ii) keep a register of name and addresses of Members; (iii) administer net metering arrangements with the Utility; and (iv) in general perform such other duties as from time to time may be assigned by the Members. If supported by a majority vote of the Members, the Secretary has the power to enter the Company into the Land Lease and any other real property contracts.

**ARTICLE V. CONTRIBUTIONS, PROFITS & LOSSES, AND DISTRIBUTIONS**

Contributions and Interests of Members: Members shall make no initial capital contribution to the Company. Members’ only contributions to the Company will be periodic pro-rata contributions for operating expenses, all of which will be paid out to third party vendors. Members shall contribute an initial per kW subscription cost as determined by the Treasurer. Each Member purchases and owns portions of solar panels separately and independently from the Company.

The Company has no ownership interest in its Members’ solar panels or in such panels’ electricity productions or net metering credits. The Company exists as a separate legal entity solely to represent the common interests of the Members in managing certain administrative or financial matters on their behalf in connection with their acquisition of solar panels in the Project.

Allocation of Net Metering Credits to Landowner and Other Parties: For purposes of this Agreement, Members agree to allocate a percentage, as explained in the Allocation Instructions (“Exhibit B”), of the total electric output of the power production of the Project, in the form of net metering credits, to the Owner of the Project site as payment for the use of the site. Such net metering credits shall be credited to Owner’s Utility Account (or any successive account designated by the Owner).

Profits, Losses, and Distributions: The Company will have no assets, other than contributions that are made from time to time by Members in respect of operating expenses and the 25 year Land Lease with the Owner. Operations of the Company are administrative in nature and are expected to be managed at a near-zero profit.

Tax Status and Tax Credits: The Company shall have pass-through taxation allowing company profits to be taxed at individual rates. Any tax credits of the Company shall be allocated to the Members in proportion to their Percentage Interests as explained in the Allocation Instructions (Exhibit “B”).

Operating Expenses and Annual Fees: Members are responsible for those expenses associated to liability and casualty insurance, state and municipal tax, maintenance and service, and other such expenses in connection with Members’ ownership of solar panels in the Project.

Members shall pay an annual operations expense fee for such expenses in such amount as may be determined from year to year by the Treasurer. The Treasurer shall also have the discretion and right to assess for unexpected or additional expenses during the year, should they occur, for any reason and as needed.

The annual operations expense fee and any additional expenses shall be pro-rated to Members according to Members’ ownership share of the Project. Members operating expenses are due and payable as determined by the Company. Members have sixty (60) days to make any required payment after request thereof. After sixty days, the Company shall have the right, among other remedies, and without any further demand to the Member, to direct the Utility to halt net metering credits to such Member and to reallocate them to the Company until the Member is brought current*.*

**ARTICLE VI. VOTING, CONSENT TO ACTION, AND MEETINGS**

Voting by Members: Each Member shall be entitled to one vote on all matters which provide for a vote of the Members, regardless of the number of panels owned. Matters relating to the management, conduct, and business of the company must be decided by a majority of the Members. Amendments to this Agreement must be approved by a supermajority of the Members. A supermajority is 75 percent of the Members.

Meetings – General and Special: The Members shall hold general meetings from time to time throughout the year to be determined by a majority of the Members. Such general meetings shall serve as a time to discuss matters related to the Solar Facility. The date of the last meeting for any given year must be within six (6) months of the end of the fiscal year.

Upon Member request and subject to majority vote, special meetings may be called in the interval between general meetings. If approved, the secretary shall provide written notice of the meeting not less than 15 days nor more than 30 days before the meeting. The notice shall set the time, place and purpose of the meeting.

Meetings – Written Consent: Action of the Members or officers may be accomplished with or without a meeting. If a meeting is held, evidence of the action shall be by minutes or resolution reflecting the action of the meeting, signed by a majority of the Members, or the secretary or such officer who may be designated. Action without a meeting may be evidenced by written consents signed by a majority of the Members, or the secretary or such officer who may be designated.

**ARTICLE VII. ASSIGNMENT OF MEMBERSHIP INTERESTS**

Solar Energy Environmental Attributes: Each Net Metered Customer shall own and retain all of the environmental attributes of their net metered energy produced by the Solar Facility. Net Metered Customers shall not unbundle or separately sell the environmental attributes, including any renewable energy credits (RECs) or certificates, from the net metered electricity. Net Metered Customers shall have all rights to make green or renewable energy claims in regards to their net metered energy as long as the RECs are not unbundled.

Assignment of Membership Interests: A Member may assign, transfer or sell their bundled interest in their solar panels in whole or in part to a third party in the Utility territory.

Termination of Membership: Membership in the Company terminates and there are no further rights and obligations of the Member under the Articles of Organization of the Company and this Agreement upon the occurrence of the assignment, transfer or sale of all of a Member’s interest in solar panels in the Project to a third party and upon signing and filing of Form LLC-3A Dissociation in compliance with 11 Vt. Stat. Ann. 3094. The former Member shall pay the $20.00 filing fee.

Member Default on Solar Financing: In the event that a Member defaults on their loan agreement with a financial institution resulting in foreclosure of the Member’s solar panels, the financial institution shall be entitled to take possession and ownership of said membership including the solar panels and have the right to assign or sell their ownership share (the foreclosed solar panels) to a party.

Event of Default on Contribution Payments: With respect to any Member, a Member who fails to make any payment on the date such payment is due, and such failure continues for a period of [sixty (60)] days after the applicable due date, shall be considered to be in Default with respect to this Agreement.

Upon Default of this Agreement, the defaulting Member shall relinquish all rights to net metering credits. A defaulting Member’s net metering credits shall be distributed to any other Member of the Company in exchange for payment of the Defaulting Member’s owed payment. A defaulting Member’s net metering credits shall be redistributed for such a period of time as the defaulting Member remains delinquent with regard to the payment due. The Secretary shall notify the Utility of the new allocation schedule for disbursement of net metering credits.

Succession Members: The assignment, transfer or sale of a Member’s interest in his or her solar panels in and of itself permits the assignee, transferee or purchaser to become a Member in the Company, with all the rights and obligations of the Member under the Articles of Organization of the Company and this Agreement. The assignment, transfer or sale of a Member’s interest in their solar panels is subject to the following conditions:

1. The assignee, transferee or purchaser becomes a Member.
2. The assignee, transferee or purchaser is or will be located within the service territory of the Utility;
3. The assignee, transferee or purchaser gives the Company meter information; and
4. [Current Members the right to approve assignment, transfer or sale of Member’s interest in his or her solar panels to the new Member (Right of First Refusal). (Note: only to be included if you want to have a right of first refusal).]

Responsibility in Assignment: Responsibility in the assignment, transfer or sale of a Member’s interest in his or her solar panels is the sole responsibility of the Member and not the Company. Upon notice of a transfer of ownership, the Company’s only responsibility is to notify the Utility of the change in net metering credits to an owner’s meter.

**ARTICLE VIII. DISPUTE RESOLUTION**

##### The parties shall negotiate any breach or dispute (“Dispute”) arising out of this Agreement. If the Dispute is not resolved through negotiation within [ ] [X] days, **it is hereby agreed that the dispute shall be submitted to binding arbitration** in accordance with the rules then prevailing of the American Arbitration Association. The arbitrator’s decision shall be final and binding, and judgment may be entered thereon. The cost of any such arbitration shall be paid as determined by the arbitrators. The judgment rendered by the arbitrators may be entered into any court of competent jurisdiction.

**ARTICLE IX. ADDITIONAL PROVISIONS**

In witness whereof, all Members will sign and be bound to the terms of this agreement.

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |  |
| --- | --- | --- | --- |
| Member # | Name | Address | Email |

Exhibit “A”

Description of Solar Facility

The Solar Facility consists of an array of photovoltaic panels with a facility-rated output of [\_\_] kW AC ([\_\_] kW DC) and [ground mounted on a fixed ground mounted rack facility] located at [\_\_\_\_\_\_\_\_\_\_\_].

Exhibit “B”

Allocation Instructions

The Company shall instruct the Utility to allocate credits for the kilowatt hours of electricity the Solar Facility generates each month to the Meters set forth below:

The Members of the Company agree that [five percent (5%)] of the total electric output of the Solar Facility will be credited to Owner’s Utility Account as payment for use of Solar Facility site in the form of net metering credits. Each Member’s percentage allocation will equal the following:

(1-.[05]) X (Members kW/total kW capacity of the Project)

The Members and the Company may agree to add meters. The Utility shall allocate kWh on a percentage basis to each Member’s account.

Company Meter: [Note to Draft: Typically the usage meter located at the site of the array for the nominal electricity used by inverters, etc.]

|  |  |  |
| --- | --- | --- |
| Percentage Allocation | Account Name | Account # |
| %\* |   |   |
| % |  |  |
| % |  |  |
| % |  |  |
| % |  |  |
| % |  |  |

\* The first line of this allocation schedule should be designated to the Owner of the Project site at [5%] of total output. Upon the reasonable request of the Company, the Members shall designate such additional Member Meters to the foregoing list to the extent reasonably necessary to ensure that the total annual consumption of all the Member Meters included in the group exceeds [\_\_\_\_] kWh.

1. Disclaimer: This agreement is intended as a model agreement that should be reviewed and modified by the user to apply to their specific circumstances and current law. We strongly recommend that all users of this agreement consult with legal counsel licensed to practice law in the relevant state on how to apply this model agreement to their specific circumstances. [↑](#footnote-ref-1)