

Direct Seller
INDEPENDENT CONTRACTOR AGREEMENT - District Manager (California)

This Direct Seller Independent Contractor Agreement (collectively with any exhibit(s) attached hereto, this “**Agreement**”), effective _____ (the “**Effective Date**”), is entered into by and between New Power, a Delaware corporation (the “**Company**”), and _____, the undersigned individual (“**Independent Contractor**”).

A. The Company is engaged in business with various fulfillment partners, (“**fulfillment partners**”), whereby the Company markets and sells “Solar” Services and provides other general services related to such activities (collectively, the “**Company Business**”). The Company desires to hire Independent Contractor, and Independent Contractor desires to provide services to the Company.

B. In consideration of the services to be provided by Independent Contractor to the Company on the terms set forth in this Agreement, the Company and Independent Contractor now desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Appointment of Independent Contractor.** The Company hereby agrees to hire Independent Contractor as a Direct Seller in such geographic area as the Company may determine for the period beginning on the Effective Date, and ending on the anniversary of the Effective Date unless this Agreement is terminated pursuant to Section 2 hereof, or extended by mutual agreement of the parties (such period, the “**Term**”), to market and sell Solar Products door-to-door, run pre-scheduled appointments, and provide other related services as directed by the Company.

1.1 **Records.** Independent Contractor shall keep, maintain, and report accurate records pertaining to services rendered to the Company, which shall include territory and sales activity (the “**Records**”) related to the Company Business.

1.2 **Independent Contractor Status.** This Agreement shall not constitute an employment contract between the Company and Independent Contractor. For purposes of this Agreement, Independent Contractor shall be an independent contractor and not the servant, employee, partner, member, manager, or joint venturer of the Company and, in conformity therewith, Independent Contractor shall retain sole and absolute discretion and judgment in the manner and means of carrying out his activities and duties as assigned by the Company and accepted by Independent Contractor, provided the same are not contrary to any law or the provisions of this Agreement. Independent Contractor will not be treated as an employee for U.S. federal tax purposes. Further, Independent Contractor shall pay all employment, income, and social security taxes levied by any federal, state, or local taxing authority on any sums paid by the Company to Independent Contractor.

1.3 **Licensing.** Independent Contractor assumes responsibility for ensuring that Independent Contractor has all necessary permits and licenses necessary to perform its obligations under this Agreement .

1.4 **No Conflict.** Independent Contractor represents and warrants that Independent Contractor’s performance of all the terms of this Agreement does not and will not breach any agreement to keep in confidence information acquired by Independent Contractor in confidence or in trust prior to Independent Contractor’s service with the Company. Independent Contractor has not entered into, and Independent Contractor agrees that Independent Contractor will not enter into, any agreement, either written or oral, in conflict herewith, or that would limit or impair Independent Contractor’s obligations hereunder including any agreement with fulfillment partners. Independent Contractor has disclosed to the Company any obligations, arrangements, agreements or interest that may constitute or give rise to a conflict on a part of the Independent Contractor. Independent Contractor further agrees to indemnify and hold the Company harmless from all damages, expenses, costs (including reasonable attorneys’ fees) and liabilities incurred in connection with, or resulting from, a breach of this Section.

1.5 **Proprietary Information.** Independent Contractor acknowledges and agrees that all intellectual property rights in all photos of installed Solar Products taken or received by Independent Contractor (after approval by the applicable customer) are owned by the Company and the Company may use such photos on its Web site and in its promotional efforts. Furthermore, the Company has been granted to Independent Contractor by all third-party holders of intellectual property rights in such photos, and Independent Contractor covenants that such photos shall not be given to any third party that will use such photos for marketing, promotional, or similar purposes (including, without limitation, any person who offers a residential solar product).

2. **Termination.**

2.1 **Termination Without Cause.** The Company may terminate Independent Contractor's relationship with the Company under this Agreement at any time and for any or no reason without notice.

2.2 **Entire Sales Period.** Independent Contractor understands and agrees that a condition precedent of its receiving any payments under this Agreement from the Company is that this Agreement must not have been terminated voluntarily by Independent Contractor or terminated for Cause by the Company prior to the date that any such payments are regularly scheduled to be paid by the Company. In other words, if Independent Contractor's relationship with the Company under this Agreement is terminated either (a) by the Company for Cause (as defined in Section 2.3), or (b) by Independent Contractor voluntarily at any time prior to the end of the Term, Independent Contractor understands and agrees that Independent Contractor will no longer qualify for any payments under this agreement not paid prior to that termination, including but not limited to payments of any bonus, incentives, compensation or other bonuses regardless of whether such bonus, incentive, or compensation has otherwise accrued.

2.3 **Termination for Cause.** For purposes of this Agreement, "***Cause***" shall be defined to include the following: (i) misappropriation of any the Company property; (ii) failure to perform Independent Contractor's duties in a competent manner or to the Company's satisfaction; (iii) dishonesty or conviction of a crime or entry of a plea of guilty or *nolo contendere* to a criminal act; (iv) conduct that reflects unfavorably upon Independent Contractor, Independent Contractor's co-workers, or the Company; and (v) any breach of the Policies and Procedures (as defined below).

2.4 **Termination By Independent Contractor.** Independent Contractor may terminate this Agreement for any or no reason upon seven (7) days' written notice to the Company.

3. **Compensation.** As compensation in full for Independent Contractor's services hereunder, the Company shall pay to Independent Contractor pursuant to the compensation schedule set forth on **Exhibit A** attached hereto. Independent Contractor will be responsible for any applicable withholdings, tax and/or other governmental requirements.

4. **Recruiting Bonus.** The Company offers recruiting bonuses to Independent Contractors. To earn any recruiting bonus the following conditions must be met: (1) the recruited Independent Contractor must acknowledge that he/she was recruited by the Independent Contractor seeking the bonus; (2) the recruited Independent Contractor must complete a Commissionable Sale as that term is defined in **Exhibit A** below; (3) both the recruited Independent Contractor and Independent Contractor seeking the recruiting bonus has not terminated his/her relationships with the Company; and (4) if the recruiting bonus is a residual or an override, both the recruited Independent Contractor and Independent Contractor seeking the recruiting bonus must attend all meetings and book a minimum of 4 credit and usage-qualified surveys per month for the company.

5. **Confidentiality.** Independent Contractor understands and acknowledges that, during Independent Contractor's relationship with the Company under this Agreement, Independent Contractor has had and will have access to and has learned and will learn (i) information proprietary to the Company and its affiliates (collectively for purposes of this Section, the "***Company***") that concerns the operation and methodology of the Company Business as the same is now and hereafter conducted by the Company, and (ii) other information proprietary to the Company, including, without limitation, trade secrets, know-how, prices, customer and supplier lists and data, customer databases, pricing and marketing plans, policies and strategies, details of customer and supplier relationships, operations methods, sales techniques, business acquisition plans, the identity of employees and other independent contractors, new recruitment and personnel acquisition plans, processes, patent and trademark applications, Web sites, Internet addresses, email addresses and domain names, including all software, information and processes necessary to operate the Company's Web site, and all other confidential information with respect to the Company Business including any information obtained about fulfillment partners

(collectively, “**Proprietary Information**”). Independent Contractor agrees that, from and after the Effective Date, Independent Contractor will keep confidential and will not disclose directly or indirectly any such Proprietary Information to any third party, except as required to fulfill Independent Contractor’s duties as an Independent Contractor of the Company during the Term of this Agreement, and will not use such Proprietary Information except for the Company’s benefit and for the Company Business and will not misuse, misappropriate, or exploit such Proprietary Information in any way. The restrictions contained herein shall not apply to any information that was (a) already available to the public at the time of disclosure, or subsequently becomes available to the public other than by breach of this Agreement, or (b) disclosed due to a requirement of law, provided that Independent Contractor shall have given prompt notice of such requirement to the Company to enable the Company to seek an appropriate protective order with respect to such disclosure.

6. **Non-solicitation.**

6.1 During the period commencing on the date of this Agreement and ending on the date that is the two (2) year anniversary of the date that Independent Contractor’s relationship with the Company terminates (the “**Non-solicitation Period**”), Independent Contractor shall not, directly or indirectly, recruit, solicit, induce, or influence (or seek to induce or influence) any person who is employed by, hired by, affiliated with, or acts as a consultant, independent contractor, or salesperson for, the Company to terminate or alter his relationship with the Company.

6.2 Should Independent Contractor violate this section of the Agreement, the Company shall be entitled to equitable relief, including, but not limited to, an injunction, and such relief shall be cumulative and in addition to any other remedies that the Company may have hereunder and/or at law or in equity; and Independent Contractor agrees not to assert as a defense in any such equitable proceeding that an adequate remedy at law exists.

7. **Interpretation and Acknowledgment.**

7.1 It is the intention of the parties hereto that the non-solicitation covenants contained in Section 5 of this Agreement be enforced to the greatest extent (but to no greater extent) in time, scope, and degree of participation as is permitted by applicable law. To this end, the parties hereto agree that such covenants shall be construed to extend in time and territory and with respect to degree of participation only so far as they may be enforced, and that such covenants are to that end hereby declared divisible and severable because it is a purpose of this Agreement to govern Independent Contractor anywhere in the United States, Puerto Rico, and Canada in which the Company, during the Non-solicitation Period, is engaged or intends to become engaged in the Company Business.

7.2 The parties hereto acknowledge that this Agreement does not, and will not, create any obligation on behalf of the Company to hire Independent Contractor after the expiration of the Term. Independent Contractor hereby acknowledges that the covenants and agreements in Section 5 shall remain enforceable if the Company terminates Independent Contractor’s relationship with the Company under this Agreement for Cause prior to the end of the Term.

8. **Non-disparagement.** During and after the Term of this Agreement, Independent Contractor agrees not to disparage the Company, its managers, officers, members, or affiliates; provided, however, that Independent Contractor may give truthful testimony given in compliance with a lawful subpoena or court order.

9. **Prior Agreements.** The parties hereto hereby agree and acknowledge that to the extent Independent Contractor has been retained by the Company for part or all of the Term under a prior agreement, this Agreement shall supersede and replace any prior agreement with respect to the Term and shall control for purposes of determining Independent Contractor’s compensation for the Term. Each of the parties hereto hereby agree and acknowledge that to the extent Independent Contractor has been retained by the Company under a prior agreement for a period of time prior to or subsequent to the Term, such prior agreement shall control for such period of time prior to or subsequent to the Term.

10. **Amendments.** No supplement, modification, verbal amendment or waiver of the terms of this agreement shall be binding on the parties hereto unless executed in writing by the party to be bound thereby.

11. **Notices.** Any notice sent to the Company hereunder shall be addressed as follows:

New Power
Attn: Thomas Shaffer
24619 Washington Ave Suite 201
Murrieta, CA 92562-3496

12. **Policies and Procedures and Training.** Independent Contractor hereby represents and warrants that it has had a chance to read and review, and agrees to comply with the Company's Policies and Procedures (the "***Policies and Procedures***"), which are attached hereto as **Exhibit B**. **Independent Contractor acknowledges and agrees that the Company may periodically update and modify the Policies and Procedures in its sole discretion upon one (1) business day's notice. Independent Contractor further acknowledges and agrees that Independent Contractor's breach of such Policies and Procedures shall constitute a breach of this Agreement, and may result in fines, suspension, and/or termination for Cause. In addition, prior to providing any services hereunder and from time-to-time as required by the Company, Independent Contractor hereby agrees to participate in the training program of the Company as directed by the Company.**

13. **Background Check.** Independent Contractor hereby consents to and authorizes the Company to conduct a background check (including a search of criminal, motor vehicle, and other records) and a credit check on Independent Contractor.

14. **Limitation of Liability.** As an independent contractor, Independent Contractor releases Company from any responsibility to provide workers compensation benefits to it or its employees. Additionally, Independent Contractor releases Company from any liability related to sickness and/or injury up to and including death sustained by Independent Contractor or its employees during the term of this agreement and/or related to or arising out of Independent Contractor's relationship with the company.

15. **Miscellaneous.**

15.1 **Assignment.** This Agreement is binding upon and for the benefit of the parties hereto, their respective officers, directors, employees, partners, principals, successors and assigns. Independent Contractor may not assign this Agreement without the prior written consent of the Company, which consent may be withheld in the sole discretion of the Company. The Company may assign this Agreement in its discretion without the consent of any other party.

15.2 **Non-Waiver.** Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

15.3 **Entire Agreement.** This Agreement (including exhibits, schedules and other documents referred to herein) contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes any prior understandings, agreements or representations, written or oral, relating to the subject matter hereof.

15.4 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement is held to be invalid, illegal or unenforceable under any applicable law or rule, the validity, legality and enforceability of the other provision of this Agreement will not be affected or impaired thereby.

15.5 **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether in the State of California or any other Jurisdiction) that would cause the application of the laws of any jurisdictions other than the State of California. If legal action is commenced by any of the parties hereto with respect to the subject matter hereof, the parties hereto agree that the jurisdiction and venue of such action shall be in the state or federal California court of competent jurisdiction. The parties hereto hereby accept California jurisdiction and agree to accept service of process as if they were personally present and served within such jurisdiction. The prevailing party in any action or proceeding to enforce this Agreement shall be entitled to its reasonable attorneys' fees and costs incurred in connection therewith. Any reference in this Agreement to gender includes all genders and words importing the singular number only shall include the plural and vice versa. This Agreement, in conjunction with **Exhibit A**, is intended to comply with the requirements of Section 3508 of the Internal Revenue Code as such section applies to "Independent Contractors."

[Remainder of page intentionally left blank; signature page to follow]

BY SIGNING THIS AGREEMENT, DIRECT SELLER ACKNOWLEDGES THAT DIRECT SELLER HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT AND THAT DIRECT SELLER IS VOLUNTARILY ENTERING INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement to be effective as of the day and year first written above.

THE COMPANY:

New Power

By: _____

Name:

Title:

Direct Seller/District Manager:

Signature: _____

Printed Name:

EXHIBIT A

DIRECT SELLER INDEPENDENT CONTRACTOR COMPENSATION FOR CALIFORNIA SALES ONLY

District Manager Commission Pay Scale - 50% of pay is installation bonus		
	Pass - A	Low Credit - B
19.9 cents/kwh	\$500/kw	\$350/kw
18.9 cents/kwh	\$400/kw	\$300/kw
17.9 cents/kwh*	\$400/kw	\$300/kw
14.9 cents/kwh**	\$400/kw	\$300/kw

The Company will determine in its sole discretion which funds qualify for A or B. Direct Sellers, including District Managers, may only sell *15% or fewer of his/her commissionable sales at 17.9 cents per kwh and **5% or few of his/her accounts at 14.9 cents per kwh. Anything more than this will result in a hold from pay on those accounts until the 15% and 5% criteria are met.

The company may deduct up to half of the commission pay from each sale where a closer or saver is provided to assist with closing the sale or saving the sale from cancellation.

If you are a saver/closer you will be paid up to half of the commission pay provided the sale is commissionable.

The Company will pay District Manager's/Direct Seller's Commissions per kW installed (the "Commission") as follows: 50% of the anticipated but not yet earned Commission will be paid on the Saturday following the week during which the customer executes a Customer Agreement and that agreement is accepted by the fund so long as the fund accepts the agreement by Friday of the previous week. If the agreement is accepted by the fund after Friday of the week during which the customer executes the agreement, the Commission will be paid on the Saturday two weeks following the week during which the customer executes the Customer Agreement. Such payment shall be an advance on commissions that are not yet earned. No commissions are earned until the Company has determined in its sole discretion that a Commissionable Sale, as that term is defined below, has been completed. All advances provided to the District Manager/Direct Seller, including any housing allowances, will be deducted from commissions earned by the District Manager/Direct Seller through Commissionable Sales before any such earned commissions are paid to the District Manager/Direct Seller, regardless of the contracts to which those commissions or advances are related. In the event that the District Manager's/Direct Seller's relationship with the Company is terminated for any reason before it has earned commissions or overrides sufficient to cover advances made to it by the Company, District Manager/Direct Seller shall immediately return all such advances to the Company, including any housing allowance. Commissions earned through Commissionable Sales minus any advances, including housing allowances, previously made to the District Manager/Direct Seller by the Company will be paid the Saturday following the week the Company determines in its sole discretion that there has been a Commissionable Sale, as that term is defined below.

Override Install Bonus Scale

\$50/kW

Overrides are only paid to District Managers on the Commissionable Sales of assistant managers and direct seller representatives in a District Manager's office. District Managers will not receive an override on his/her own sales or on the sales of another District or Co-Manager. No overrides are earned or paid until the Company has determined in its sole discretion that a Commissionable Sale, as that term is defined below, has been completed. All advances provided to the District Manager, including any housing allowances, will be deducted from overrides earned by the District Manager through Commissionable Sales before any such earned overrides are paid to the District Manager, regardless of the contracts to which those overrides or advances are related. Overrides earned through Commissionable Sales minus any advances, including housing allowances, previously made to the District Manager by the Company will be paid the

Saturday following the week the Company determines in its sole discretion that there has been a Commissionable Sale, as that term is defined below.

District Managers will not earn or be paid any overrides unless the performance criteria below is met at the time of the Commissionable Sale potentially giving rise to an override. Further, failure to meet the performance criteria below will constitute a basis for termination of the District Manager's role as District Manager and/or termination of the District Manager's relationship with the Company:

1. District Managers must have a minimum of 5 active, selling Direct Sellers working under them within 90 days of becoming a District Manager;
2. District Managers must have and maintain a minimum of 8 active, selling Direct Sellers working under them within 180 days of becoming a District Manager;
3. The District Manager must have a minimum of 8 SBs per month. A SB occurs when a customer passes a credit check, the customer's usage qualifies, a site survey is booked and completed; and
4. The District Manager must have a minimum of 4 Commissionable Sales per month.

Defined Terms. As used herein, the following terms shall have the following meanings:

"Commissionable Sale" shall mean the satisfaction of each of the following conditions: (1) Independent Contractor has appropriately submitted a completed Customer Agreement (and Change Order if applicable) signed by customer; (2) Customer has successfully passed Company's then current credit, usage, and rate requirements (3) Independent Contractor has appropriately submitted a Net Metering Agreement signed by customer or the person on the utility bill at the residence where the solar system will be installed; (4) Independent Contractor has appropriately submitted a copy of customer's recent utility bill; (5) Independent Contractor has appropriately submitted VOID check for ACH payment information and/or evidence of deposit (e.g. email confirmation that deposit has been made), if applicable; (6) the customer is on title of the home and applicable utility bills; (7) attic pictures and rafter analysis (if applicable) have been completed (8) items needed for a successful site survey have been submitted (9) the builder has deemed the system design to be acceptable; (10) the customer has completed a successful welcome call with the Company (if applicable; (11) Independent Contractor has submitted copies of the trust if customer home is in a trust (12) The fund or named in the Power Purchase Agreement has approved each of the foregoing items; (13) any customer incentives have been installed on contracted premises; (14) Customer ultimately has solar system installed at contracted premises and has passed Installation acceptance; and (15) Independent Contractor has not terminated his relationship with the Company as of the date when commissions on a sale are scheduled to be paid to Independent Contractor. Independent Contractor acknowledges and agrees that he is not entitled to any compensation set forth herein for orders that do not constitute a Commissionable Sale.

"Compensation Week" shall mean the period beginning on a Sunday at 12:00 a.m. and ending on the following Saturday at 11:59 p.m.

EXHIBIT B

POLICIES AND PROCEDURES

1. **Offsets.** Notwithstanding anything herein to the contrary, the Company may offset all amounts that Independent Contractor owes to the Company against future Commission and any other compensation to which Independent Contractor may be entitled to receive under this Agreement, which may include any commission advances.
2. **Services.** The Services shall include, but shall not be limited to, the following:
 - i. Direct Seller/District Manager shall directly solicit customers to enter into residential power purchase agreements with the Company's funding affiliates, pursuant to which the Company's affiliates will install photovoltaic solar energy systems on the homes of such customers (collectively "Equipment");
 - ii. Direct Seller/District Manager shall attend all sales or correlation meetings scheduled by Direct Seller's/District Manager's principal Company contact;
 - iii. Direct Seller/District Manager shall be responsible for such services as are commensurate with and required by such position; and
 - iv. Direct Seller/District Manager shall provide any other services as the Company may reasonably request or delegate to Direct Seller/District Manager from time to time.
3. **Licensing.** As part of the Services, Direct Seller/District Manager agrees and represents that Direct Seller/District Manager will provide accurate and truthful information on all applications for the Approvals. Direct Seller/District Manager shall receive the Approvals prior to performing any Services under this Agreement. Direct Seller/District Manager agrees to obtain and maintain all Approvals in full force and effect and in good standing at all times during the Term. Direct Seller's/District Manager's failure to obtain and maintain any license or permit necessary or required for Direct Seller/District Manager to perform services under the terms of this Agreement may (i) affect bonus and compensation, and (ii) result in disciplinary action, up to and including immediate termination.
4. **Compliance with State and Federal Law.** Direct Seller/District Manager agrees and represents that Direct Seller/District Manager will comply with all Federal and State laws in performance of its duties under its agreement with the Company, including but not limited to the Fair Credit Reporting Act. The Fair Credit Reporting Act requires Company to obtain consent from a customer before pulling a customer's credit report. Direct Seller/District Manager can fulfill this requirement by submitting to Company a written credit check authorization including customer's signature. Any Direct Seller/District Manager in violation of this section is subject to fine(s) and/or termination. Direct Seller/District Manager acknowledges they understand this requirement and assumes any liability that results from not obtaining and submitting to company an acceptable form of a customer's authorization for Company to perform a credit check. Direct Seller/District Manager shall not keep or make accessible any personal customer information related to this credit check. Direct Seller/District Manager shall assume liability for lost or stolen sensitive customer information.