

## **AUTHORIZED DEALER AGREEMENT**

### **[FOR USE IN THE U.S. ONLY]**

This Authorized Dealer Agreement (this "Agreement") is entered into this \_\_\_\_\_, 2009 (the "Effective Date") by and between Next Generation Energy® LLC, a Colorado limited liability company ("Supplier"), and \_\_\_\_\_ ("Dealer").

#### **Recitals**

Dealer desires to acquire the right to sell certain of Supplier's products, and Supplier desires that Dealer do so, in a specified territory and in accordance with the other terms and conditions set forth in this Agreement.

#### **Agreement**

Dealer and Supplier, in consideration of the mutual benefits to be derived hereby and intending to be legally bound, agree as follows:

- 1. Dealer's Rights; Territory.** Supplier hereby grants to Dealer the non-exclusive right to sell, distribute, market and otherwise deal in and with respect to renewable energy systems, racking components and other related products manufactured by Supplier and other manufacturers which are offered for sale by Supplier from time to time (the "Products") to purchasers who reside in or have their principal places of business within \_\_\_\_\_ (the "Territory"). Supplier's obligations and duties under this Agreement may be carried out from time to time by Supplier's master authorized representative Priest-Zimmerman, Inc. or its successor (the "Master Manufacturer's Rep"), or by authorized distributors appointed by Supplier or the Master Manufacturer's Rep.
- 2. Supplier Services.** At Dealer's request, Supplier may agree to rent or lease Products to Dealer for use at trade shows and similar marketing venues. Supplier also may offer services, including but not limited to architectural, structural, training and installation assistance, relating to the Products on a case by case basis. Dealer and Supplier may agree separately in writing for Supplier to provide some or all of those services to Dealer or to Dealer's customers.
- 3. Purchase Orders; Sales Orders.** All purchase orders placed by Dealer must be in a form acceptable to Supplier and delivered to Supplier by reputable courier, regular mail, electronic mail or confirmed facsimile. Supplier may in its sole discretion either accept or reject a Product purchase order submitted by Dealer. If Supplier accepts a purchase order placed by Dealer, it will confirm its acceptance in writing (a "Sales Order") within a reasonable time after its receipt of the purchase order. If any Product price in a purchase order accepted by Supplier is not the correct current price, Supplier shall correct such pricing information in the Sales Order. If any Product price is so corrected by Supplier, Dealer shall have three days after its receipt of the Sales Order to cancel the purchase order because of the price difference by written notice to Supplier. Purchase orders shall not be cancellable by Dealer except as permitted by the preceding sentence. Subject to the limited right of Dealer to cancel purchase orders on the grounds of price corrections by Supplier, issuance of a Sales Order by Supplier creates a binding legal contract between Dealer and Supplier on the terms and conditions set forth in this Agreement and the Sales Order. The Product prices set forth in any Sales Order shall prevail over any conflicting prices in any price list. Supplier may in its sole discretion require advance payment by Dealer for Products covered by any Sales Order. In addition to the prices stated in Sales Orders, Dealer shall be solely responsible for, and promptly shall pay, all sales and use taxes and other taxes, charges and fees imposed upon or relating to the purchase, sale, delivery and use of the Products purchased by Dealer pursuant to this Agreement.
- 4. Shipping; Insurance; Payment.** Supplier shall use its commercially reasonable efforts to deliver Products ordered by Dealer promptly after issuance of the Sales Order. Supplier will deliver the Products EXW (Incoterms 2000) Supplier's facility in Lafayette, Colorado. Freight costs, packaging charges and insurance costs shall be paid by Dealer and shall be in addition to the Product prices. If Supplier pays any freight charges or any other cost that is required to be paid by Dealer, that amount shall be included in Supplier's invoice and paid by Dealer upon presentation thereof. Payment terms shall be net 30 days from the date of Supplier's invoice. Supplier may at its option grant Dealer a discount of up to 2% of the Product purchase price if payment in full is received by Supplier within 10 (ten) days after the date of Supplier's invoice. If Dealer fails to make any payment as and when due under this Agreement, without prejudice to any other remedies available to Supplier, Supplier shall have the right to refuse to deliver Products to Dealer until all payments in default have been made. Payments that are not made by Dealer when due shall bear interest at the rate of 1 ½% (or, if lower, the maximum rate permitted by applicable law) per month or portion thereof until paid.
- 5. Inspection of Shipments; Warranties.** Dealer shall inspect Products promptly upon delivery and shall, within three (3) days after delivery, notify Supplier in writing if such inspection reveals that any Product is defective or if there is a shortage of Products received compared to the description in the bill of lading. If Products manufactured by Supplier are defective as a result of manufacturing errors covered by Supplier's warranty as in effect from time to time, Supplier shall either deliver replacement Products to Dealer or repair the defective Products in a timely manner. If any defective Product is covered by the warranty of a manufacturer other than Supplier, then Supplier will provide commercially reasonable assistance to Dealer to obtain repairs or a replacement Product from that manufacturer. Supplier may at its sole discretion revise or revoke its warranties on Products manufactured by Supplier from time to time prior to delivery of such Products.
- 6. Product Returns.** Dealer must give notice to Supplier within three days after Dealer's receipt of Products from Supplier if it wishes to return any Products for reasons other than a defect covered by Supplier's warranty. If Supplier authorizes the return of any Products in writing, then Dealer may ship those Products to Supplier and the shipment must be received by Supplier within 30 days after the initial delivery of the Products to Dealer. All returned Products that are regularly stocked by Supplier are subject to a 25% restocking fee payable by Dealer. Special order products that are not regularly stocked by Supplier not returnable without Supplier's prior written agreement. Dealer shall pay shipping and insurance costs on Products which Dealer is permitted to return up to the point of delivery at Supplier's facility in Lafayette, Colorado.

7. Product Pricing; Discounts. (A) Dealer must purchase from Supplier and pay in full for a minimum of \$25,000 of Products during each 12-month period beginning on the Effective Date to be entitled to purchase Products at the prices contained in the Dealer Price List as in effect from time to time. If Dealer is not eligible for pricing based on the Dealer Price List, Products ordered by Dealer will be priced according to Supplier's Standard Price List as in effect from time to time. Additional price discounts may be offered to Dealer if Dealer purchases and pays in full for more than \$250,000 of Products from Supplier during any 12-month period beginning on the Effective Date.

(B) The prices reflected in the Dealer Price List and the Standard Price List may be changed from time to time at the sole discretion of Supplier. Supplier will use commercially reasonable efforts to update the price lists to the extent necessary to reflect any changes in the price of Products as of the first day of each calendar month, and make the new price lists available upon Dealer's request. However, it is Dealer's obligation to obtain confirmation from Supplier of applicable pricing prior to giving a firm quotation to Dealer's customer. Notice of any price changes applicable to Products that occur after Supplier's receipt of a purchase order and prior to shipment shall be provided to the Dealer prior to shipment. Supplier requires a 50% deposit on all items that are not regularly stocked by Supplier and on special order items. The remaining 50% of the purchase price for such items shall be payable upon shipment by Supplier.

8. Purchase Money Security Interest. Dealer hereby grants to Supplier a purchase money security interest in the Products to secure the payment as and when due of the purchase price of Products ordered by Dealer and other amounts payable by Dealer pursuant to this Agreement. Dealer agrees promptly to execute, file and deliver any documents and instruments requested by Supplier from time to time to evidence and perfect such security interest, and hereby appoints Supplier its agent and attorney in fact to accomplish such execution and delivery if Dealer fails to do so promptly. Such appointment is coupled with an interest and is irrevocable.

9. Installation, Inspection & Servicing by Dealer; Indemnity. Dealer shall be solely responsible for determining customers' Product requirements. Dealer shall provide Product installation, inspection, maintenance and warranty service to customers in a prompt and professional manner as part of its obligations under this Agreement without additional compensation. All Product installations performed by Dealer shall be in strict compliance with Supplier's installation manual, as revised from time to time by Supplier. As between Supplier and Dealer, Dealer shall have exclusive responsibility for determining whether customers' premises are suitable for Product installation, commissioning and operation and for identifying any required changes to the roof, support system, framing, electrical system or other aspects of the customer's premises which are needed prior to Product installation, commissioning and operation. Dealer may from time to time be required to provide to Supplier reports reflecting Dealer's inspection of Products previously installed by Dealer or others at customers' premises. Dealer shall indemnify, defend and hold harmless Supplier and Supplier's owners, officers, directors, employees and agents from and against any and all liabilities, costs, damages and causes of action arising directly or indirectly from (a) the failure of Dealer properly and timely to satisfy its obligations under this Agreement, (b) any guarantee, representation or warranty about Products made by Dealer or any of its employees or other personnel which are not specifically authorized by Supplier in writing and (c) any workers' compensation or claim for any benefits by any employee or other personnel of Dealer. Dealer's indemnification obligations shall survive the termination of this Agreement.

10. Use of Supplier's Trademarks. Dealer shall have the right during the term of this Agreement to use the trademarks of Supplier that are set forth in Exhibit A (the "Marks") for the sole purpose of selling, marketing and distributing the Products within the Territory, subject to the requirement for Dealer to obtain Supplier's prior written consent for any proposed use of the Marks. Dealer acknowledges that Supplier owns the Marks and that Dealer's right to use the Marks as permitted by this Section 10 is derived solely from this Agreement, is limited to the use specifically permitted by this Agreement, is revocable by Supplier at any time upon notice and must comply with all standards and specifications prescribed by Supplier from time to time regarding use of the Marks. Dealer shall not claim ownership of any of the Marks or make any filing with respect to or claim to any of the Marks. Dealer shall give notice to Supplier promptly if Dealer learns of any unauthorized use of any Mark in the Territory. Upon termination or expiration of this Agreement, Dealer shall immediately discontinue all use of the Marks and return to Supplier all materials and supplies bearing the Marks which are in Dealer's possession or control.

11. Term and Termination. The term of this Agreement begins on the Effective Date and ends at the close of business on December 31 of the same calendar year, unless terminated earlier as provided in this Section 11. The term of this Agreement shall renew automatically for successive 12-month periods thereafter unless terminated by either party giving at least 30 days' notice to the other party prior to the scheduled renewal date. Supplier also shall have the right to terminate this Agreement at any time upon 30 days' notice to Dealer if Dealer breaches, or fails to comply with, any provision of this Agreement and such breach or failure is not cured within ten days after Supplier gives notice to Dealer of such breach or failure. This Agreement will terminate immediately without notice if any bankruptcy, insolvency or similar proceeding is commenced by or against Dealer and is not dismissed within sixty (60) days, or if Dealer makes any assignment for the benefit of its creditors generally or if any trustee or receiver is appointed for Dealer or its assets.

12. Effect of Termination. Except in case of any termination of this Agreement by Supplier because of an uncured breach or failure by Dealer, Dealer shall have a period of one hundred twenty (120) days after the date this Agreement terminates or expires within which dealer may sell any Products on hand to purchasers in the Territory. No other Product sales may be made by Dealer after termination or expiration of this Agreement. Supplier may in its sole discretion either fulfill or cancel any purchase orders for Products that have been accepted by Supplier, but for which the Products have not been shipped, prior to termination or expiration. The rights and liabilities of the parties that accrue prior to the termination or expiration of this Agreement shall survive such termination or expiration. The provisions of this Agreement which by their nature are intended to survive termination or expiration (including but not limited to Purchase Money Security Interest, Non-Solicitation, Confidentiality and Non-Disclosure and Dispute Resolution) shall survive such termination or expiration indefinitely.

13. Independence of Parties. This Agreement does not make Dealer an agent of Supplier for any purpose and Dealer has no right or authority to, and shall not, make any representation or warranty or incur any liability or obligation for or on behalf of Supplier. Dealer is solely responsible for all expenses incurred in connection with the operation of Dealer's office, warehouse, and sales activities and shall provide all personnel, facilities and materials required in connection with Dealer's sale, marketing and distribution of the Products.

14. Confidentiality and Non-Disclosure. Dealer agrees to treat as confidential and proprietary information, and to take all reasonable precautions during the term of this Agreement and after its termination to protect the confidentiality and secrecy of, all information of Supplier which is not accessible or known to the general public, including information regarding the terms of this Agreement, Supplier's business and marketing methods, Product prices, Product specifications and research, engineering data, operational methods, and customer identities and purchases ("Confidential Information"). Upon the termination of this Agreement, Dealer shall return to Supplier all Confidential Information of Supplier in tangible form, together with any copies or derivatives thereof in any form or medium which Dealer has made or caused to be made or which are in its possession or control, and shall destroy all Confidential Information of Supplier in intangible form which is in Dealer's possession or control. Dealer acknowledges and agrees that any violation or threatened violation of this Section 14 would cause irreparable harm to Supplier and, therefore, Supplier shall be entitled to an injunction, without posting bond, prohibiting Dealer from any such violation or threatened violation. The provisions of this Section shall survive the termination of this Agreement.

15. Non-Solicitation. Dealer shall not offer to hire or retain or solicit for hire or retention any person who, during the term of this Agreement or within twelve months after its termination or expiration, is an employee, independent contractor or consultant for Supplier.

16. Force Majeure. Neither party shall be liable for its failure to perform or delay in performing its obligations under this Agreement (other than obligations to pay money, which shall not be excused) due to events beyond its reasonable control, including but not limited to labor strikes or lockouts, riots, war, power failures, embargo, government action or inaction after the Effective Date, shortages of materials, severe weather or acts of nature. Notwithstanding the preceding sentence, each party shall use its reasonable commercial efforts to remedy any disruption in its performance under this Agreement as quickly as possible, and shall give notice to the other party of any event which will delay or prevent its performance.

17. Dealer Representations, Warranties and Covenants. Dealer represents, warrants and covenants to and with Supplier that (a) Dealer has all required corporate power and authority (or if Dealer is not a corporation, it has sufficient power and authority under its organizational documents or agreements and applicable law) to enter into this Agreement and to carry out its obligations hereunder, (b) the execution, delivery and performance of this Agreement have been duly authorized by Dealer, (c) Dealer is not insolvent and is not the subject of any filing or proceeding relating to bankruptcy or insolvency, and has not made any assignment in lieu of foreclosure or any compromise with its creditors, (d) its entry into this Agreement does not violate or constitute a breach of any court or administrative order or any material agreement to which it is a party or by which it is bound, (e) Dealer has complied and shall continue to comply with all applicable laws, regulations, rules and orders in connection with its business operations and the transactions contemplated by this Agreement, and has caused and will continue to cause its employees and agents to do so, and (f) Dealer has obtained, and throughout the term of this Agreement shall maintain, all required licenses, permits and certificates relating to the operation of its business and the performance of its obligations under this Agreement. Dealer covenants that it promptly will give notice to Supplier of the commencement of any legal action or investigation, or the issuance of any order, injunction, violation notice or decree of any court, agency or other governmental instrumentality which could adversely affect the operation of Dealer's business.

18. Insurance. Throughout the term of this Agreement Dealer shall maintain in effect the following types and amounts of insurance, naming Supplier and its owners, officers, employees and agents as additional insureds:

- Commercial general liability insurance, including bodily injury, property damage and products liability: \$1,000,000 per occurrence
- Workers' compensation insurance covering all statutory liabilities: \$1,000,000

Dealer shall provide certificates of coverage to Supplier within ten days after the Effective Date. Such insurance policies must provide that they cannot be cancelled or the coverage materially changed without at least thirty (30) days' prior written notice to Supplier.

19. Assignment; Change of Control. Dealer has been selected by Supplier based on its performance and reputation in the renewable energy sector. Dealer may not delegate or assign any of its rights or obligations under this Agreement without the prior written consent of Supplier. Subject to the preceding sentence, the parties' rights and obligations inure to and are binding on their representatives, successors and assigns. Dealer shall give notice to Supplier promptly upon Dealer becoming aware of any pending or completed change in the control of Dealer from that existing on the date of this Agreement or any event or action which is likely to result in Dealer ceasing to conduct business in the manner in which it does so on the Effective Date.

20. Governing Law. This Agreement shall be interpreted and governed by the internal laws of the State of Colorado, without reference to any choice of laws principles which would cause the laws of a different jurisdiction to apply.

21. Dispute Resolution. (a) If a dispute relating to this Agreement arises the parties will negotiate in good faith to settle the dispute. If the parties cannot resolve the dispute by negotiation, then either party may seek to enforce any provision of, or any right arising out of, this Agreement by arbitration conducted under the then-current Commercial Arbitration Rules (the "AAA Rules") of the American Arbitration Association (the "AAA"), except as the AAA Rules are modified herein. The arbitration shall be conducted before a single arbitrator mutually agreed on by the parties who does not have a conflict of interest. If the parties do not agree on the arbitrator within thirty (30) days after a notice of arbitration has been given by one party to the other, then an arbitrator shall be appointed by the AAA. The arbitration shall be conducted at a location in Boulder, Colorado that is acceptable to Dealer and Supplier, or, if they cannot agree, at a location chosen by the arbitrator.

(b) The arbitrator's award shall be in writing and shall be final and binding on the parties. If either party fails to appear or be represented at the arbitration proceedings, then the arbitrator shall render a decision, which shall have the same force and effect as if the absent party had been present. Each party shall bear its own costs and expenses in connection with arbitration, and the parties shall share equally the costs of arbitration, including the arbitrator's fees.

(c) Any award rendered by an arbitrator may be entered for enforcement in any court of competent jurisdiction, and the party against whom enforcement is sought shall bear the expenses, including attorneys' fees, of enforcement. Each party consents to the jurisdiction of any such court in any enforcement proceeding and irrevocably waives any objection to venue therein.

22. LIMITATION OF DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE, INCLUDING LOST PROFITS, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE HEREOF. IN NO EVENT SHALL SUPPLIER BE LIABLE TO DEALER FOR ANY MONIES EXPENDED OR ANY INVESTMENT OF TIME, EFFORT OR FUNDS BY DEALER TO PERFORM ITS OBLIGATIONS HEREUNDER OR IN ANTICIPATION OF ACTING OR CONTINUING TO ACT AS SUPPLIER'S AUTHORIZED DEALER IN THE TERRITORY.

23. Notices. Any notice to be given in connection with this Agreement will be in writing and sent by a courier service that tracks deliveries. Notices will be sent to the applicable party's address set forth below, or to any different notice address of which the applicable party subsequently gives notice pursuant to this Agreement.

24. Entire Agreement. This Agreement, including Exhibit A, constitutes the entire agreement between Dealer and Supplier regarding the subject matter hereof, and supersedes and replaces any and all prior written or oral promises, representations, courses of dealing and understandings of the parties as to such subject matter. Each party acknowledges and agrees that no representation, promise, inducement or statement of intention other than those specifically set forth in this Agreement has been made by the other party or has been relied upon in entering into this Agreement. Except for the Product prices set forth in Sales Orders, no additional or different terms set forth in any purchase order or correspondence shall modify the provisions of this Agreement unless such purchase order or correspondence is in writing and specifically states that it is intended to modify some or all of the provisions of this Agreement. The parties intend each provision of this Agreement to be fully enforceable. However, if any arbitrator or court having competent jurisdiction finds that any provision is unenforceable under applicable law, then the parties intend that the arbitrator or court modify such provision to the minimum extent necessary for it to be enforceable and still carry out the parties' intent.

25. Signatures; Headings. This Agreement may be executed in counterparts, which together will constitute one and the same contract. A signature delivered by facsimile or as a PDF file shall have the same force and effect as an original signature. The headings contained in this Agreement are for convenience of reference only and shall not be deemed to limit or affect the subject matter contained herein. The parties have jointly negotiated and prepared this Agreement, and the terms hereof shall not be construed in favor or against either party on account of its participation in such preparation.

Dealer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_, 2009

Supplier: Next Generation Energy LLC  
75 Waneka Parkway  
Lafayette, CO 80026

By: \_\_\_\_\_  
David Kreutzman, CEO

Date: \_\_\_\_\_, 2009

With a copy of notices to:

Hutchinson, Black and Cook, LLC  
921 Walnut Street, Suite 200  
Boulder, CO 80302  
Attn: Amy Hirter

EXHIBIT A  
MARKS

Please return to NGE \_\_\_\_\_

*It's in the Sun!*<sup>™</sup>