

## **Community Distributed Generation Subscriber Agreement**

This Community Distributed Generation Subscriber Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_ (the “Effective Date”), between \_\_\_\_\_ (“Buyer”) and \_\_\_\_\_ (“Seller”), (Buyer and Seller referred to herein individually as a “Party” and collectively as the “Parties”).

WHEREAS, the Solar Facility is interconnected to, and delivers electricity into, the electric distribution system of ConEdison (“Utility”) pursuant to the Utility’s net metering tariff on file with the New York State Public Service Commission (“PSC”) and the NY PSC’s Orders enabling net metering and community distributed generation (NYPSC Order Case 15-E-0082, “Order Establishing Community Net Metering,” effective May 1, 2015; and NY PSC Order, Case 15-E-0082, “Order Establishing A Community Distributed Generation Program and Making Other Findings,” effective July 17, 2015);

WHEREAS, in accordance with the Order, the Utility allocates Community Distributed Generation Credits (“Credits”) to Seller in each Billing Period (as defined in the Order) in which the kWh generated by Seller's Solar Facility exceeds Seller's kWh usage;

WHEREAS, in accordance with the Order, for each Billing Period, Seller may allocate all or part of its Credits to other customers of the Utility pursuant to the terms of the Order (“Qualifying Customers”); and

WHEREAS, Buyer is a Qualifying Customer with respect to the location(s) set forth in Section 1 below (“Qualifying Location(s)”), and Seller wishes to allocate and assign a portion of its Credits to Buyer, and Buyer wishes to accept such Credits, all upon the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### 1. Allocation of Credits

- a. For each Billing Period during the term of this Agreement, Seller shall allocate, sell, transfer, assign, convey, set over and deliver bill credits associated with site production equivalent to up to 100% of Buyer’s historical monthly usage, as determined by the Utility. Seller makes no representations concerning the amount of Credits which will be available during any billing period.
- b. Seller shall have the right to make minor adjustments to the percentage of the Credits allocable to Buyer hereunder in future Billing Periods.
- c. Seller shall cause to be filed a Community Distributed Generation (CDG) Allocation Request Form (“Allocation Report”) with the Utility indicating the proportion of generated electricity to be allocated to Buyer’s Qualifying Location(s).
- d. Buyer shall irrevocably accept and assume the allocation and assignment of Credits set forth above.
- e. Should Utility cause Buyer’s Retail Electric Service Classification to be changed or modified for any reason, Buyer shall immediately notify Seller of this change and the extent of the modification. This agreement shall be null and void upon notice of such change. Seller reserves the right to cancel this agreement should Buyer fail to notify seller of changes or modifications to Seller’s Retail Electric Service Classification.

2. Payment for Credits

- a. For each Billing Period (i.e., monthly) until the end of this agreement, Seller shall provide to Buyer an invoice (“Seller Invoice”) that details the amount of Credits transferred to the Buyer’s Qualifying Location(s) by the Utility. Included in the invoice will be a line item identifying the payment due from Buyer, which will be equal to 90% of the credit value transferred to Buyer. This will result in a 10% reduction of the Buyer’s payments to the Utility for the amount of electricity that is offset by the Credits. Buyer’s payments to Seller shall be due and payment shall be made by ACH (“Automatic Clearing House”) within thirty (30) days after Seller provides Buyer with Seller’s Invoice.
- b. Seller may, upon notice to Buyer, instruct payments hereunder be made to an Affiliate of Seller or other third party.
- c. Notwithstanding anything to the contrary contained herein, Buyer may terminate this Agreement by giving Seller written notice within ninety (90) days of desired termination date. Following Buyer’s notice of termination, Buyer will continue to pay for the Credits allocated to Buyer until Seller amends the Allocation Report with the Utility to replace Buyer with a new Qualifying Customer with approximately the same allocation, at which point the termination of this Agreement shall take effect.
- d. Buyer reserves the right to terminate the contract without penalty within three business days after signing the contract.

3. Dispute or Complaint Resolution Process

- a. If Buyer, in good faith, disputes an amount billed by Seller as provided in this Agreement, Buyer shall promptly notify Seller of the basis for the dispute no later than the fifth (5<sup>th</sup>) business day after Seller’s invoice of Buyer. The parties agree to seek resolution in good faith. Upon resolution of the dispute, any required disbursements or payments shall be made to Buyer or Seller, where appropriate, with clear communication regarding the method and timing of these disbursements or payments.
- b. If Buyer, in good faith, disputes an amount paid to Seller as provided in this Agreement, Buyer shall notify seller within six (6) calendar months from the date of such payment. The parties agree to seek resolution in good faith. Upon resolution of the dispute, any required disbursements or payments shall be made to Buyer or Seller, where appropriate, with clear communication regarding the method and timing of these disbursements or payments.
- c. If Buyer, in good faith, wishes to file any other complaint or dispute with Seller, Buyer shall do so via written notice or electronic mail as soon as possible. Buyer may also file a complaint at any time with the Department of Public Service at the following address:

Office of Consumer Services  
NYS Department of Public Service  
3 Empire State Plaza  
Albany, NY 12223  
Ph.: 1-800-342-3377 (8:30 am-4:00 pm)

- d. Buyer may, at any point during a dispute or complaint resolution process, request a written report from Seller detailing all attempts to resolve the complaint or dispute.

4. Mutual Cooperation. Buyer and Seller shall, from time-to-time after the execution of this Agreement, at the request of either Party, prepare, execute and deliver to the requesting Party such other necessary instruments and to cooperate with each other and take such other actions as may reasonably be needed to effect the intent of this Agreement.

5. Term of Agreement. The initial term of this Agreement is one (1) year and shall commence upon the date of the first bill issued by Con Edison which shows a Credit from Seller. Following the initial one (1) year term, this Agreement shall be automatically extended on a yearly basis under the same terms and conditions stated herein, until terminated by either Party upon written notice received by the other Party at least ninety (90) days prior to the end of the then current term. Notwithstanding the foregoing, Sections 2, 3, 5, 6, 7 and 8 hereof shall survive termination of this Agreement.
6. Events of Default.
  - a. Each of the following shall constitute an Event of Default hereunder:
    - i. The failure of Buyer to pay any undisputed sum when due, except that Buyer shall be entitled to written notice of a late payment on two (2) occasions within any rolling three hundred sixty-five (365) day period. Buyer shall not be in default on such occasions if the amount due is received by Seller within five (5) days after Buyer's receipt of Seller's notice of default; and
    - ii. The failure of Seller to provide Buyer with Credits for a period of more than thirty (30) days with no notice to Buyer within thirty (30) days of missed Credits, except where Section 8 applies;
  - b. Immediately upon an Event of Default of Buyer, Seller may, in its sole discretion, terminate this Agreement by giving Buyer written notice thereof and allocate, sell and assign to a third Party the electricity allocated to Buyer by the terms of this Agreement.
  - c. Immediately upon an Event of Default of Seller, Buyer's obligations to purchase Credits hereunder shall cease and upon written notice by Buyer to Seller, this Agreement shall be terminated.
7. Force Majeure. If Seller is unable to perform all or some of its obligations under this Limited Warranty because of a Force Majeure Event, Seller will be excused from whatever performance is affected by the Force Majeure Event, provided that:
  - a. "Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by Seller's fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of power due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means); unavailability of power from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from Seller's failure to have exercised reasonable diligence); power or voltage surge caused by someone other than Seller including a grid supply voltage outside of the standard range specified by your utility; and failure of equipment not utilized by Seller or under its control.
  - b. Seller, as soon as is reasonably practical, gives Buyer notice describing the Force Majeure Event;
  - c. Seller's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event (i.e., when a Force Majeure Event is over, Seller will make repairs); and
8. Change in Law.
  - a. Impacts of Change in Law. If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Buyer in writing of such Change in Law. Within thirty (30) days following receipt by the Buyer of such notice, the Seller shall provide the buyer with amendments to this Agreement as is reasonably necessary to preserve the economic value of this Agreement to both

Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.

- b. Illegality or Impossibility. If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Buyer without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
  - c. "Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.
9. Notice Provisions. All Notices of any kind which either Party is required or desires to give to the other Party in connection with this Agreement shall be in writing, effective upon delivery, and given by: (i) registered certified mail, return receipt requested with the appropriate postage paid; (ii) personal delivery; (iii) overnight courier service; or (iv.) electronic mail, in each case to the address used by such Party, as applicable:

To Seller:

[TBD]

To Buyer:

[TBD]

10. Other Provisions.

- a. This Agreement and all provisions and all provisions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.
- b. This Agreement and any counterpart thereof may be delivered via facsimile or electronically in Portable Document Format (pdf) to the respective Party's representative, it being the express intent of the Parties that such documents and any counterparts thereof so delivered (together with the signatures therein) shall have the same force and effect as if they were originals.
- c. The services provided by (Seller) to Buyer are governed by the terms and conditions of this Agreement and HEFPA for residential Buyers.

(Signature Page Follows)

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IN WITNESS WHEREOF, this Assignment Agreement has been duly executed and delivered by the duly authorized officers of the Parties as of the date first above written.

**SELLER:**

Signature:

Name:

Title:

**BUYER:**

Signature:

Name:

Title: