

## COMMUNITY DISTRIBUTED GENERATION BILL CREDIT AGREEMENT

This COMMUNITY DISTRIBUTED GENERATION BILL CREDIT AGREEMENT is entered into as of [ ], 2024 (the "Effective Date") by and between:

**Buyer:** [ ]      and      **Seller:** Hillside Solar, LLC

Buyer and Seller are referred to herein individually as a "**Party**" and collectively as the "**Parties**". This Agreement shall supersede any and all previous Agreements.

A. Seller is engaged in the business of developing, installing, owning, operating, and maintaining solar generation systems. Seller owns a 6,106 kW-DC photovoltaic solar electric generation system located at 571 E Main Street Yorktown, NY 10535 (defined individually and collectively, as the context requires, as the "**System**") to produce electricity and credits pursuant to the New York Public Service Commission's orders in Docket Nos. 15-E-0751, 15-E-0082, and 15-M-0180 and the Utility's Value Stack Tariff.

B. Seller owns or plans to construct the System within the Utility's service territory which generates utility bill credits ("**Bill Credits**") a specific portion of which shall be allocated by Seller to Buyer hereunder.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree and intend to be legally bound as follows:

1. Commercial Terms:

- **Monthly Subscription Payment:** The product of the Subscription Rate and the Bill Credits allocated to Buyer for the Bill Period.
- **Discount Rate:** shall be determined based on Section 2.8
- **Subscription Rate:** 1 minus the Discount Rate
- **Percentage Allocation:** XX percent (XX%) of the project
- **Initial Term:** Twenty-five (25) years after Commercial Operation Date
- **Utility:** Consolidated Edison Company of New York, Inc.

2. The following documents, along with this Cover Page, shall be deemed to form the Agreement, each of which are incorporated herein by this reference as though set forth herein in their entirety:

Exhibit A	General Terms and Conditions
Appendix A	Buyer Participating Utility Account
Appendix B	Termination Fee Schedule

This Agreement may be executed by the Parties in one or more counterparts, all of which taken together, will constitute one and the same instrument. Any counterpart may be executed by facsimile signature or any image transmitted by electronic mail (such as a pdf file) and such facsimile signature or image shall be deemed an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

Seller: [ ]

Buyer: [ ]

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

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

Name:  
Title:

Name:  
Title:

## Exhibit A General Terms and Conditions

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

**Definitions.** The following terms, when used in the Agreement and initially capitalized, have the following meanings:

**“Agreement”** means the Cover Page and all Exhibits, Appendices and Schedules attached thereto, including these General Terms and Conditions, each as modified from time to time in accordance with the terms of this Agreement.

**“Allocation Request”** means any allocation requests submitted by Seller to the Utility from time to time requesting allocation of Bill Credits corresponding to System output to CDG Satellites.

**“Bill Credits”** means the monetary credits arising out of participation in the CDG Program that the Utility applies to Buyer’s Electric Utility Bill. The Bill Credits are calculated as the product of (i) the total energy generated by the System and delivered to the Utility, (ii) the Percentage Allocation, and (iii) the applicable rate set forth in the Utility’s Value Stack Tariff.

**“Bill Period”** means one (1) calendar month.

**“Buyer”** has the meaning set forth on the Cover Page or any successor entity.

**“Buyer Event of Default”** means an Event of Default by Buyer.

**“CDG”** means Community Distributed Generation.

**“CDG Host”** has the meaning set forth in the Utility’s Value Stack Tariff. Buyer is the CDG Host under this Agreement.

**“CDG Program”** means the New York State Community Distributed Generation program authorized by the New York Public Service Commission’s July 17, 2015 Order Establishing a Community Distributed Generation Program and Making Other Findings (Case 15-E-0082), as amended or modified from time to time, and administered by the Utility.

**“CDG Satellite”** means a Utility customer who is allocated Bill Credits from its CDG Host in accordance with the Utility’s Value Stack Tariff. Buyer is a CDG Satellite under this Agreement.

**“Code”** shall mean the United States Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

**“Commercial Operation”** means that the System has been constructed in accordance with Laws applicable to the subject of this Agreement, is mechanically complete and immediately capable of generating electricity at full or substantially full capacity and has been interconnected to the local distribution system of the Utility in accordance with the interconnection agreement and the Utility’s tariffs to allow regular, continuous operation of the System, and qualification as a CDG Host.

**“Commercial Operation Date”** means the date on which the System is ready for Commercial Operation, such date to be identified by Seller in a notice to Buyer as the Commercial Operation Date.

**“Cover Page”** means the first page of this Agreement.

**“Defaulting Party”** has the meaning set forth below.

**“Discount Rate”** has the meaning set forth on the Cover Page.

**“Dispute”** has the meaning set forth below.

**“Effective Date”** shall be the Commercial Operation Date.

**“Environmental Attributes”** means the aggregate amount of credits, set-offs, payments, rights, attributes, or other benefits of all kinds associated with or arising out of or otherwise corresponding to the capacity and associated electricity, or otherwise arising due to the production of electricity by the System, and the sale, transmission and distribution of such electricity by Seller and others (other than payments under this Agreement), ITCs, NYSERDA Grant and other tax deductions, credits, and incentives. Environmental Attributes shall include (i) SRECs, RECS, environmental air quality credits, off-sets or other benefits related to the generation of electricity by the System in a manner which reduces, displaces or off-sets emissions resulting from fuel combustion at another location pursuant to any Law, and (ii) credits (other than Bill Credits), off-sets, green pricing programs, renewable energy credit trading programs, or any similar program or benefits derived from the use, purchase or distribution of renewable energy from the generation of electricity from the System pursuant to any Law. Environmental Attributes shall not include any credit, allowance, entitlement, certificate, product, valuation or other benefit that inures solely to Buyer.

**“Event of Default”** has the meaning set forth below.

**“Force Majeure”** means an event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include failure or interruption of the production or operation of the System by any third party or occurrence outside control of Seller, delivery or acceptance of electricity due to an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerrilla action; terrorism or threat of terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition; action of the elements; hurricane; flood; lightning; wind; drought; peril of the sea; the binding order of any governmental authority other than Seller or entity controlled by Seller; the failure to act on the part of any governmental authority other than Seller or entity controlled by Seller (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products, but not to the extent that any such unavailability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence; and failure of equipment not utilized by or under the control of a Party.

**“ICSA”** means the NYSERDA Inclusive Community Solar Adder.

**“Initial Term”** has the meaning set forth on the Cover Page.

**“Insolvency Proceeding”** means any case, action or proceeding with respect to a person before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of

creditors, composition, marshaling of assets for creditors, or other similar arrangement in respect of its creditors generally or any substantial portion or its creditors.

“**ITC**” means the investment tax credit for energy property described in Section 48 of the Code.

“**kW**” means kilowatt.

“**kWh**” means kilowatt-hour.

“**Laws**” means any law, treaty, code, rule or regulation, or determination of, court or other governmental authority exercising executive, legislative, judicial, regulatory or administrative functions.

“**Low Income ITC**” means the Category 4 of the Department of Energy Low Income Communities Bonus Credit specifically providing 50% ITC to Seller.

“**Meter**” means the meter registered with the Utility for CDG Host Accounts pursuant to the Utility’s Value Stack Tariff.

“**Monthly Subscription Payment**” has the meaning set forth on the Cover Page.

“**Net Crediting Program**” means the consolidated billing program authorized by the New York Public Service Commission’s December 12, 2019 Order In the Matter of Consolidated Billing for Distributed Energy Resources (Case 19-M-0463), as amended or modified from time to time, under which the Utility will apply the savings rate provided by the CDG Host to all of the CDG Satellites in the project (excluding any Anchor Satellite) resulting in a net credit being applied to the CDG Satellites Electric Bills. Under this Program, the Utility remits payment to the CDG Host, on behalf of the CDG Satellites, equal to the Subscription Fee less the Utility Administrative Fees.

“**NYSERDA Grant**” means, with respect to the System, a grant from the New York State Research and Development Authority

“**Operating Period**” means the period commencing on the Commercial Operation Date and ending on termination of this Agreement.

“**Party**” has the meaning set forth on the Cover Page.

“**Percentage Allocation**” means the percentage of the System’s output identified on the Cover Page that Seller has initially allocated to Buyer’s Utility Account(s), as it may be adjusted from time to time in accordance with Section 7.6. In accordance with the CDG Program. Seller will allocate a portion of the System’s output to the Utility Account specified in Appendix A.

“**Renewal Term**” means an additional term for which Buyer and Seller agree to extend this Agreement prior to the end of the Initial Term. Such extension must be agreed in writing 60 days prior to termination and can be for a period of years agreed to by the Parties.

“**Seller**” has the meaning set forth on the Cover Page or any successor entity.

“**Seller Event of Default**” means an Event of Default by Seller.

“**Seller Replacement Agreement**” means an agreement entered into by Seller after the termination of this Agreement for

a Buyer Event of Default for the sale of a Percentage Allocation of the System.

“**Service Address**” means the physical address of the Utility Account where service is provided.

“**Subscription Rate**” has the meaning set forth on the Cover Page.

“**System Financing**” has the meaning set forth below.

“**System Lenders**” has the meaning set forth below.

“**System**” has the meaning set forth on the Cover Page.

“**Taxes**” means any and all new or existing ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes or similar charges, and any increases in the same, but “Taxes” does not include income taxes or other similar taxes based on income or net revenues.

“**Term**” means the period beginning on the Effective Date and ending on the last day of the Initial Term or the last subsequent Renewal Term, subject to earlier termination pursuant to the terms hereof, as applicable.

“**Utility**” has the meaning set forth on the Cover Page.

“**Utility Account**” means the utility account identified by Buyer in Appendix A, as it may be updated from time to time.

“**Utility’s CDG Procedural Requirements**” means Consolidated Edison Company of New York, Inc.’s Community Distributed Generation Procedural Requirements for Value Stack Customers effective December 1, 2018, as it may be amended from time to time.

“**Utility’s CDG Net Crediting Manual**” means the Con Edison Value Stack CDG Net Crediting Manual filed August 31, 2020, as it may be amended from time to time.

“**Utility’s Value Stack Tariff**” means Consolidated Edison Company of New York, Inc.’s Schedule for Electricity Service, P.S.C. No. 10 – Electricity, Service Classification Rider R-Net Metering and Value Stack Tariff for Customer-Generators.

**Interpretation.** Unless the context otherwise requires, the following general rules of construction shall apply to this Agreement: (a) terms stated in the singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa; (b) the words “includes” or “including” shall mean, unless the context requires otherwise, “including with limitation”; (c) references to a Section or Exhibit shall mean a Section or Exhibit, as the case may be, of this Agreement; (d) a reference to an agreement or instrument shall be to the agreement or instrument as modified through the date on which the reference is made; (e) a reference to a Law is to the Law as amended, replaced or restated from time to time; (f) a reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and (g) a reference to Buyer or Seller shall include its permitted assigns and successors, unless contrary to the context.

## ARTICLE 2 SALE AND PURCHASE OF BILL CREDITS

**2.1 Delivery, Sale and Purchase.** Beginning on the Commercial Operation Date, Seller shall sell to Buyer, and facilitate the delivery to Buyer of, Bill Credits associated with Buyer's Percentage Allocation, and Buyer shall purchase such Bill Credits and make payment to Seller for such Bill Credits in the form of Monthly Subscription Payments. Seller makes no representation concerning the exact amount of Bill Credits that will be available during any Bill Period, or that Bill Credits will be allocated to any or all of Buyer's Utility Account.

**2.2 Buyer Acknowledgments.** Buyer acknowledges the following: (i) Seller shall deliver electricity to the Utility and not to Buyer, the Utility will make all calculations and determinations regarding the amount of the Bill Credit to be applied to Buyer's electric account, which calculations shall be made pursuant to CDG Program requirements, (ii) Buyer will continue to receive a bill from the Utility throughout the Term and Buyer remains responsible for paying all charges billed by the Utility, and (iii) Seller in no way assumes any liability for Buyer's electric utility charges.

**2.3 Unit Contingent Sale.** The delivery of Bill Credits is expressly subject to, and contingent on, the availability of the System, the generation of electricity by the System, and the allocation of Bill Credits by the Utility. This Agreement does not guarantee savings or a minimum level of system performance or production of energy or allocation of Bill Credits.

**2.4 Buyer Eligibility Criteria.** Buyer's eligibility to receive Bill Credits is expressly conditioned upon Buyer meeting the following criteria and any other criteria outlined by applicable law, all orders of the New York Public Service Commission related to the CDG Program, the Utility's CDG Procedural Requirements for Value Stack Customers, the Utility's CDG Net Crediting Manual, and the Utility's Value Stack Tariff (the "Buyer Eligibility Criteria"): (i) Buyer is an Electric Utility account holder with one or more Service Addresses in the Electric Utility's service territory; (ii) the Bill Credits Allocated shall amount to at least one thousand (1,000) kWhs annually; (iii) the Bill Credits Allocated shall not exceed the Buyer's historic annual kWh usage or forecasted usage if annual historic data is not available; (iv) Buyer is not currently a net metered customer-generator, a remote net metered host or satellite account or taking Standby Service under the Utility's Tariff; (v) Buyer's Utility Account, address, and contact information contained in Disclosure Statement are true, accurate, and complete; (vi) Buyer acknowledges and agrees that if Seller receives the ICSA and/or Low Income ITC then Buyer will implement a HUD compliant mechanism to pass through at least 50% of the Bill Credits to tenants at the Service Address; and (vii) Buyer acknowledges and agrees that participation in the CDG program will not result in any increased cost (e.g. rent or common charge increase) for tenants at the Service Address. If at any point Buyer is ineligible to receive Bill Credits as contemplated under this Agreement, Seller may terminate this Agreement upon written notice to the Buyer.

Should the Buyer be found to be in violation of the Buyer Eligibility Criteria, this Agreement may be subject to termination by Seller.

**2.5 Utility Data, Information Sharing and Privacy.** Buyer will provide Seller with the Utility Account that will participate in the CDG Program under this Agreement. The Buyer Utility Account participating hereunder are listed in Appendix B. If the Utility changes or modifies Buyer's Utility Account for any reason during the term of this Agreement, Buyer will immediately notify Seller of such change.

Buyer authorizes Seller to obtain and review Buyer's historical kWh consumption data and billing determinants for each Buyer Utility Account listed in Appendix A.

Buyer shall permit Seller to provide the Utility with the following information in connection with Allocation Requests or otherwise: the Percentage Allocation, the Subscription Rate, the Buyer's name, the Buyer's Utility Account number or numbers, the Buyer's mailing address, and the Buyer's service address or addresses.

The Utility Account information, consumption data and billing determinants will not be disclosed to a third party unless required by law or unless the third party is obligated to maintain the confidentiality of such information and disclosure is reasonably necessary for the administration of this Agreement.

Buyer shall notify Seller if the Utility causes Buyer's Utility Account to be changed or modified for any reason and shall provide Seller with copies of any written notifications from the Utility relating to such change or modification.

Buyer hereby appoints Seller as its bill pay agent for its Utility Account enabling Seller to access Buyer's Utility Account information on a regular basis in order to calculate Buyer's monthly invoice amounts and determine if the Utility has allocated the appropriate amount of Bill Credits.

**2.6. Creditworthiness.** Buyer authorizes Seller to research Buyer's credit and obtain Buyer's credit report now, and in the future, and share Buyer's credit information with Buyer's financing partners.

**2.7. Environmental Attributes.** Seller's delivery to Buyer of the Bill Credits produced by the System and Buyer's ownership of the Bill Credits produced by the System shall not entitle Buyer to Environmental Attributes or any other attributes of ownership of the System, all of which shall be retained, owned, and controlled by Seller.

**2.8. Discount Rate.** Buyer acknowledges that the Discount Rate will be based on the Seller's ability to secure additional low-income community solar incentives. For avoidance of doubt, the three potential scenarios and Discount Rates are outlined below:

(i) If the Seller does not receive the ICSA nor does Seller receive Low Income ITC, then the Discount Rate shall be 5%;

(ii) If the Seller receives the ICSA, but the Seller does not receive the Low Income ITC, then the Discount Rate shall be 10%;

(iii) If the Seller receives the ICSA and Low Income ITC then the Discount Rate shall be 20%.

## ARTICLE 3 TAXES

**3.1 Seller Obligations.** Seller shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System.

## ARTICLE 4 OPERATIONS

**4.1 System Operations.** Seller shall at its sole cost and expense (i) construct, operate, insure and maintain the System in accordance with Laws, applicable manufacturers' warranties

and instructions and the requirements of this Agreement; (ii) perform all repairs on the System; and (iii) provide, or arrange for the provision of, all labor, material, and other supplies for the System.

**4.2 System Development.** Subject to the terms hereof, Seller shall at its sole cost and expense undertake commercially reasonable efforts to obtain required permits and financing for, and to construct the System in a manner such that the System qualifies as a CDG Host Facility in accordance with the Utility's CDG Procedural Requirements for Value Stack Customers, the Utility's CDG Net Crediting Manual, and the Utility's Value Stack Tariff and arrange for interconnection of the System to the Utility's electrical grid. At no time shall Buyer have any duty to construct, operate, or maintain the System, or to perform any other obligations of Seller. Seller is responsible for submitting Allocation Requests to the Utility from time to time as needed to allocate Bill Credits associated with the output of the System. Buyer shall irrevocably accept and assume the allocation and assignment of Bill Credits as reflected in the Allocation Requests consistent with the terms of this Agreement.

## ARTICLE 5 TERM

**5.1 Initial Term.** This Agreement shall become effective on and as of the Effective Date and shall continue in effect until the end of the Initial Term, unless terminated earlier pursuant to the terms hereof.

**5.2 Termination of Utility's Value Stack Tariff.** Upon implementation by the New York Public Service Commission or other Government Entity of any rule or regulation or issuance of any order that may affect any provision of this Agreement, in particular any rule, regulation or order regarding the provision of or eligibility for Bill Credits or CDG Program participation, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s), regulation(s) and/or order(s) to the greatest extent possible, and shall use best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion. Furthermore, so long as any such amendment will materially benefit a Party without material detriment to the other Party and is otherwise permitted by law, the Parties commit to each other in good faith to make commercially reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s), regulation(s) or order(s) regarding CDG Program participation and ensure that the System and Buyer are eligible to participate in the CDG Program and that Seller qualifies as a CDG Host.

## ARTICLE 6 DEFAULT AND TERMINATION

**6.1 Events of Default.** An event of default under this Agreement (an "Event of Default") shall be deemed to exist with respect to a Party (the "Defaulting Party") upon the occurrence of any one or more of the following:

**6.1.1. Payment Defaults.** If the Defaulting Party fails to pay any amount due and payable under this Agreement, other than an amount which is subject to a valid good faith dispute, within thirty (30) days of receipt of a payment default notice given by the other Party regarding such non-payment.

**6.1.2. Other Defaults Generally.** If the Defaulting Party fails to substantially perform any other material obligation under this Agreement, and does not cure such failure within thirty (30) days of the date of receipt of notice from the other Party demanding cure; provided that such thirty (30) day cure period shall be extended if and to the extent reasonably necessary to accomplish such cure, but only so long as the Defaulting Party

diligently pursues such cure and continues such cure to completion, and provided that such extended period of cure shall not exceed an additional thirty (30) days and provided further that this Section shall not apply to any failure to make payments.

**6.1.3. Failure of Representations and Warranties.** If any representation or warranty of the Defaulting Party shall prove at any time to have been incorrect, not including matters outside the control of the Buyer, in any material respect when made and shall remain material to the transactions contemplated hereby, if the Defaulting Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) days of the date of receipt of notice from the other Party demanding cure or, if it cannot be reasonably cured within such thirty-day period, such longer period of time as is reasonably necessary to accomplish such cure, provided that the Defaulting Party diligently commences such cure in such period and continues such cure to completion, and provided that such extended period of cure shall be allowed only so long as the failure to complete such cure does not materially adversely affect the other Party.

**6.1.4. Insolvency.** If the Defaulting Party (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they come due, (ii) voluntarily ceases to conduct its business in the ordinary course, (iii) commences any Insolvency Proceeding with respect to itself, or (iv) takes any action to effectuate or authorize any of the foregoing; or in the event that (a) any involuntary Insolvency Proceeding is commenced or filed against the Defaulting Party, or a writ, judgment, warrant of attachment, execution or similar process is issued or levied against a substantial part of the Defaulting Party's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within thirty (30) days after commencement, filing or levy; (b) the Defaulting Party admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (c) the Defaulting Party acquiesces in this the appointment of a receiver, trustee, custodian, liquidator, mortgagee in possession (or agent therefore), or other similar person for itself or a substantial portion of its property or business.

## 6.2 Remedies.

**6.2.1. Generally.** Upon the occurrence and during the continuation of an Event of Default, the Party not in default shall have the right to pursue any remedy under this Agreement or now or hereafter existing under applicable Law or in equity, including an action for damages, and including termination of this Agreement upon five (5) days prior written notice to the Defaulting Party. Nothing herein, however, shall limit either Party's right to collect damages upon the occurrence of a breach or default by the other Party that does not become an Event of Default.

**6.2.2. Termination Matters.** If Seller terminates this Agreement as a result of a Buyer Event of Default, or if Buyer terminates this Agreement for any reason other than an Event of Default by Seller, Buyer shall be liable for, among other things, the Termination Fee provided in Appendix B. Such amount shall be paid from Buyer to Seller within ten (10) days of any such termination. It is in the Buyer's interest to inform Seller at least 180 days in advance of any desired termination to allow Seller to obtain a Seller Replacement Agreement. In the

event no Seller Replacement Agreement is obtained on the date of termination, Buyer shall be liable for the value of the Monthly Subscription Payments until such Seller Replacement Agreement is obtained. The foregoing shall not limit other remedies available to Seller at law or in equity for a breach or default by Buyer.

**6.3.2. Transfer of Meter Account.** Promptly upon the termination of this Agreement for any reason, Buyer shall execute such documents prepared by Seller as are required by the Utility. Buyer hereby appoints Seller as Buyer's attorney-in-fact, with full authority in the place and stead of Buyer and in the name of Buyer or otherwise, to take any action and to execute any instrument that Seller may deem necessary or advisable in connection with requirements of the Utility in the event of termination. Seller agrees to notify Buyer prior to execution of any documents for Buyer's approval which shall not unreasonably be withheld.

## **ARTICLE 7 BILLING, PAYMENT AND TAXES**

**7.1 Billing Method.** Seller shall (i) enroll the System and the Buyer's Utility Account participating hereunder in the Utility's Net Crediting Program or (ii) invoice the Buyer for Monthly Subscription Payments.

**7.2 Net Crediting Program.** If the Seller elects to enroll the System and the Buyer's Utility Account participating hereunder in the Utility's Net Crediting Program, it shall be responsible for submitting all the required enrollment documentation to the Utility, including a Net Crediting Agreement, which is a prerequisite for participation in the Net Crediting Program. Under the Net Crediting Program, the Utility shall be responsible for remitting the Monthly Subscription Payment to Seller and applying a net Bill Credit to Buyer's Utility Account. If Seller does not enroll the System and the Buyer's Utility Account participating hereunder in the Utility's Net Crediting Program, it shall invoice the Buyer in accordance with Section 7.3 below.

**7.3 Monthly Invoices for Subscription Payments.** Seller shall invoice the Buyer for the Monthly Subscription Payments for each Bill Period and Buyer shall pay the amount specified in each invoice to Seller no later than thirty (30) days after the date of the invoice. Payments shall be made by wire transfer to an account designated in writing by Seller from time to time. Nothing in this agreement shall require Buyer to pay any tax, fee, or tariff as a result of this Agreement.

**7.4 Late Payment Charges.** Any amounts not paid on or before the date due hereunder shall accrue interest from the date due until the date actually paid at the prime rate of interest published on the due date for a payment under "Money Rates" in the Wall Street Journal, plus two percent (2%) per annum (or such lower percentage as required by applicable Laws).

**7.5 Excess Bill Credits.** If Bill Credits allocated to Buyer cannot be fully applied in a Bill Period under CDG Program requirements, the excess Bill Credits will be applied to Buyer's subsequent utility bills until fully applied. Buyer understands and agrees the Monthly Subscription Payment is due to Seller regardless of whether the Bill Credit is applied in whole or in part and carried over into subsequent bill periods.

**7.6 Seller Adjustments to Percentage Allocation.** In any Bill Period, Buyer will have the right to adjust the Percentage Allocation allocated to Buyer in order to (i) comply with the rules

of the CDG Program, or (ii) maximize the System allocations to Buyer and the System's other buyers as permitted under the CDG Program, provided that the Percentage Allocation will not exceed Buyer's historic annual kWh usage or forecasted usage if annual historic data is not available. Buyer acknowledges that any such adjustments may affect the amount of Bill Credits received and the Monthly Subscription Payment.

## **ARTICLE 8 FORCE MAJEURE**

**8.1 Effect of Force Majeure.** Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

**8.1.1.** The Party affected by such Force Majeure, as soon as reasonably practical after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice, fully describing the particulars of the occurrence.

**8.1.2.** The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and

**8.1.3.** The Party affected by such Force Majeure uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible.

**8.2 Payment Obligations Not Excused.** Notwithstanding anything in this Article to the contrary, no payment obligation shall be excused by such event of Force Majeure.

## **ARTICLE 9 DISPUTE RESOLUTION**

**9.1 Referral to Senior Management.** Any and all disputes arising out of or relating to this Agreement (a "Dispute") shall be resolved exclusively in accordance with this Article. The Parties agree to make a diligent, good faith attempt to resolve any such dispute through negotiation by senior management members (meaning those able to legally bind the Buyer and Seller) before either Party commences other dispute resolution measures. Either Party claiming a Dispute shall provide written notice thereof to the other Party setting forth the details of the Dispute. Any Dispute that is not settled to the mutual satisfaction of the Parties within 60 days shall be subject to mediation between the Parties conducted in New York, New York, or such other location mutually agreeable to the Parties, and in accordance with the Commercial Mediation Procedures of the American Arbitration Association (the "Mediation Procedures") in effect on the date that a Party gives notice of its demand for mediation (such notice, the "Mediation Notice"). The Party initiating the mediation (the "Submitting Party") shall submit such Dispute to mediation by providing a written demand for mediation to the other Party (the "Responding Party"), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the demand. The mediator(s) selected shall have contract resolution experience and experience in the electric power business and shall not have any current or past substantial business or financial relationships with the Parties or their affiliates. Mediators must agree to be bound by the confidentiality provisions of this Agreement and shall conduct the proceedings in accordance

with the Mediation Procedures. The Dispute will be assigned to a single neutral mediator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties cannot agree on a single neutral mediator within such period, the mediator shall be chosen in accordance with the Mediation Procedures.

The provisions of this Section shall survive any termination of this Agreement and shall apply (except as provided herein) to any Disputes arising out of this Agreement.

**9.2 Continuation of Performance.** During the conduct of dispute resolution procedures, (i) the Parties shall continue to perform their respective obligations under this Agreement, and (ii) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute; provided, however, that nothing in this Section shall be construed to prevent Seller from suspending performance in the event that Buyer has not paid undisputed amounts due and owing to Seller under this Agreement.

**9.3 Effect of Termination.** No termination of this Agreement following an Event of Default shall relieve the Defaulting Party of its liability and obligations hereunder, and the non-defaulting Party may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement.

## **ARTICLE 10 COMPLIANCE WITH LAWS**

Both Parties shall comply with all applicable Laws as they relate to this Agreement and the performance by the Parties hereunder.

## **ARTICLE 11 ASSIGNMENT**

**11.1 Generally.** Subject to the Section entitled "Permitted Assignments" this Agreement may not be assigned by either Party without the other Party's written consent, not to be unreasonably withheld.

**11.2 Permitted Assignments.** Notwithstanding the Section immediately above, Seller may, without Buyer's consent, but with written notice to Buyer, collaterally assign this Agreement as security to the System Lenders in accordance with ARTICLE 12, or to an affiliate of Seller ("Affiliate"), which term shall mean a person or entity that, directly or indirectly, controls or is controlled by or is under common control with Seller, and for such purposes the word "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Seller, whether through the ownership of voting securities or by contract or otherwise; provided, however, that any such assignment of this Agreement by Seller shall not release Seller from its liabilities under this Agreement.

**11.3 Continued Effectiveness; Assignments in Violation.** Subject to the forgoing prohibitions against assignment, the agreements, covenants, conditions and provisions contained in this Agreement bind, apply to and inure to the benefit of the Parties and their permitted heirs, successors and assigns. Any assignment in violation of this ARTICLE shall be void and of no effect.

## **ARTICLE 12 SYSTEM FINANCING**

**12.1 System Lenders and Financing.** The Parties acknowledge that Seller may obtain construction and long-term

financing or other credit support from lenders or other third parties (the "System Lenders") in connection with the development and ownership of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the System Lenders to support the System Financing. The Buyer will not be required to execute any document that would alter the fundamental risk / benefit allocation reflected in this Agreement as of the Effective Date. The Parties also agree that, in accordance with this Section, Seller may assign this Agreement to the System Lenders as collateral to support the System and Seller's obligations to the System Lenders. In connection with any such assignment, Buyer agrees to enter into an agreement directly with the System Lenders under which Buyer shall consent to such assignment and will agree to other provisions customary and reasonable in the solar photovoltaic electric generation industry for the benefit of the System Lenders (including provisions under which the System Lenders or their designees (i) may assume the rights of Seller under this Agreement; (ii) shall be entitled to receive copies of certain notices hereunder that Buyer might provide to Seller; and (iii) shall have extended cure periods (up to 20 additional days maximum) to cure any defaults by Seller hereunder.

**12.2 Mutual Cooperation.** Buyer will execute any document prepared by the Seller that is reasonably requested by Seller that is routinely required by lenders, utilities, or other entities involved in the development and financing of solar photovoltaic electric generation systems. These documents may include, but are not limited to, any documents required to be executed by customer in connection with participation in the CDG program, construction financing consent forms, permanent financing consent forms, and any amendments reasonably required by System Lenders or due to changes in Laws. The Buyer will not be required to execute any document that would alter the fundamental risk / benefit allocation reflected in this Agreement as of the Effective Date. Seller shall be responsible for, in accordance with the terms of this Agreement, carrying out its duties under and pursuant to the Utility's CDG Procedural Requirements for Value Stack Customers, the Utility's CDG Net Crediting Manual, and the Utility's Value Stack Tariff including Buyer's CDG Host duties, including all arrangements with the Utility for the interconnection agreement and qualification of the System under the CDG Program.

## **ARTICLE 13 LIMITATIONS OF LIABILITY**

**13.1 No Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, EXCEPT TO THE EXTENT THE DAMAGES IN SECTION 6.2.1 MAY BE SO CONSIDERED, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY, OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY LOSS OF PROFITS, LOSS OF PRODUCTION, EARNINGS, REVENUE, USE, DATA, CONTRACT OR GOOD WILL, EVEN IN SITUATIONS WHERE A PARTY HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES.

**13.2 Parties' Intent.** IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, AND IRRESPECTIVE OF WHETHER ANY CLAIM HEREUNDER OR RELATING HERETO IS IN CONTRACT,

TORT, STRICT LIABILITY, STATUTORY LIABILITY, OR OTHERWISE.

**13.3 Indemnification.** In addition to, and not in limitation of, any other rights and remedies available to Buyer, Seller shall indemnify Buyer against (i) any third party claims against Buyer arising from any breach by Seller of any representation, warranty or covenant contained in this Agreement or the interconnection agreement with the Utility and (ii) all claims against Buyer that may arise in connection with Buyer acting as a CDG Satellite, as that term is defined in the Utility's Value Stack Tariff, except in each case to the extent arising from Buyer's breach of any representation, warranty or covenant expressly set forth in this Agreement.

## **ARTICLE 14 REPRESENTATIONS, WARRANTIES AND COVENANTS**

**14.1 General.** Each Party represents and warrants to the other the following:

**14.1.1.** Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate action, and do not and will not violate any Law; and this Agreement is a valid obligation of such Party, enforceable against such Party in accordance with its terms.

**14.1.2.** Such Party has obtained all licenses, authorizations, consents and approvals required by any governmental authority and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all Laws that relate to this Agreement in all material respects.

**14.1.3.** Other Agreements. Neither the execution and delivery of this Agreement by the Party, nor the performance by such Party of any of its obligations under this Agreement, shall conflict with or result in a default under any of the terms or conditions of any agreement or obligation to which such Party is a party or by which such Party or its assets may be bound.

**14.2.** Buyer agrees not take any of the following actions during the term of this Agreement, each of which would disqualify the Buyer from participating in the CDG Program pursuant to the Utility's CDG Procedural Requirements for Value Stack Customers and the Utility's Value Stack Tariff: (1) Concurrently enter into an agreement with another CDG Host (2) Concurrently participate in Remote Net Metering as the term is defined in the Utility's Value Stack Tariff; or (3) Concurrently install on-site generation, in each case for the same participating Utility Account.

## **ARTICLE 15 MISCELLANEOUS**

**15.1 Notices.**

**15.1.1.** Any notice, invoice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be served personally, by reputable express courier service, by first class mail or by e-mail followed with confirmation delivery of hard copy, in each case to the other Party at the address set forth on the Cover Page. All notices shall be effective upon receipt.

**15.1.2.** Each Party shall have the right to change the place to which notice shall be sent or delivered or to specify one address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.

**15.2 Consents.** Any consent that is provided for pursuant to this Agreement shall not be unreasonably withheld or delayed.

**15.3 Headings.** The titles or headings of the various sections, articles and paragraphs hereof are intended solely for convenience and ease of reference and are not intended, and are not to be deemed for any purpose, to modify or explain or place any interpretation or construction upon any of the provisions of this Agreement.

**15.4 Governing Law.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, excluding any choice of law rules that might direct the application of the laws of a different jurisdiction, irrespective of the places of execution or of the order in which signatures of the Parties are affixed or of the place of performance.

**15.5 Integration.** This Agreement, together with all Exhibits hereto, embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties, verbal or written, relating to the subject matter hereof.

**15.6 Relationship of Parties.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and none shall be considered the agent of the other.

**15.7 No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole benefit of Buyer and Seller, and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of or have any direct or indirect cause of action or claim in connection with, this Agreement.

**15.8 Amendments; Waivers.** This Agreement may be modified only by a writing that is signed by both Parties. Any waiver of the provisions of this Agreement must be in writing and will not be implied by any usage of trade, course of dealing or course of performance. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy by Buyer or Seller constitutes a waiver of any other right or remedy contained or provided by Laws. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance hereunder shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

**15.9 Construction of Agreement.** This Agreement is to be construed so as to effectuate the agreements and representations of Buyer and Seller as expressed herein. No provision of this Agreement shall be construed or interpreted for or against either Party because such Party drafted, or caused its legal representative to draft, the provision. The Agreement shall be subject to all applicable Laws.

**15.10 Severability.** If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in



any respect under applicable Laws, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Laws and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

**15.11 Further Actions.** Each Party shall take all necessary acts and make, execute, and deliver such written instruments as may from time to time be reasonably required to carry out the terms of this Agreement. Buyer shall not be required to execute documents or instruments subsequent to the execution of the Agreement that will materially or unreasonably increase Buyer's risk or obligations under the Agreement or result in the waiver of any of Buyer's rights or remedies under the Agreement or at law or in equity or require Buyer to give an opinion or make a statement of fact of which Buyer does not have actual knowledge.

**15.12 Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any governmental agency in a manner contrary to this Agreement. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests and attempts to ensure that Seller does not become subject to any such

regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement.

**15.13 Survival.** The provisions of Section 7.4, ARTICLE 6, ARTICLE 11, and ARTICLE 12 shall survive termination of this Agreement.

**15.14 Change in Law.** Seller is responsible for all risk associated with changes in Laws related to Bill Credits during the Term of this Agreement.

**15.15 Records and Audits.** Seller shall maintain operating and maintenance records for the System, subject to the retention requirements hereof. Each Party will keep, for a period of not less than two (2) years after the termination of this Agreement, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for all transactions hereunder. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions hereunder during such other Party's normal business hours. Before discarding any records, Seller shall notify Buyer of its intent to do so no later than ninety (90) days before discarding, and Buyer may, if it chooses, elect to make copies of any such records at Buyer's cost.

**15.16 Confidentiality.**

Neither party shall (i) make any public comment, statement, communication or press release with respect to this Agreement that directly or indirectly references the other party or (ii) use the other party's name or trademarks for publicity, marketing or advertising purposes, without such party's prior written consent



**APPENDIX A**

**BUYER PARTICIPATING UTILITY ACCOUNT**

<b>Utility Account Number</b>	<b>Service Address</b>

**APPENDIX B**

**TERMINATION FEE SCHEDULE**