

COMMUNITY DISTRIBUTED GENERATION DISCLOSURE FORM

Provider Information **CDG Provider:** _____
Provider has designated _____ [SERVICER NAME] _____ (“**Servicer**”) as its agent for purposes of this Agreement. _____ [SERVICER NAME] _____ is a third-party servicer that facilitates your relationship with the CDG Provider as an agent of the Provider. Any notices and communications shall be directed to:
_____ [SERVICER NAME] _____
Address: _____
Phone: _____ | Email: _____

Customer Information, Distribution Utility

Name:	Distribution Company (“ Utility ”):
Service Address:	Mailing Address (if different):
Telephone:	Email:

Overview

This document describes your community solar subscription agreement (“**Agreement**”) for participation in a community solar program with a solar photovoltaic project (the “**Solar Project**”) owned, operated, and maintained by _____ (the “**Provider**”). This Agreement entitles you to receive credit on your local Utility bill equal to the monetary value of your share of the kilowatt-hours of electricity generated each month by the Solar Project (“**Bill Credits**”), as further described in Section 1 below. In the event that the terms in this statement conflict with terms appearing elsewhere in the Agreement, the terms in this statement are controlling. Read this document and the Agreement carefully so that you fully understand the terms.

Price, Fees, and Charges

Each month, you will receive Bill Credits on your electric utility bill based on the electricity generated by the Solar Project. Provider’s fee will automatically be taken from the Bill Credits you receive on your utility bill. _____

Name:	[PROJECT]	Location:	[PROJECT LOCATION]
Size:	[PROJECT MWP]		

Project Location and Customer Allocation

The Solar Project to which you are subscribing may not be completed yet, and you may be placed on a waitlist until an appropriate Solar Project becomes available. We reserve the right to assign you to any eligible project based on available capacity. The size of your allocation will be determined based on your historical usage during the prior 12 months and we size your subscription to offset most of your average usage based on that historical data. Your allocation may be adjusted during the Term in our discretion or upon your request as your usage changes over time.

Length of Agreement and Renewal

This Agreement will commence on the Effective Date. The term of the agreement is _____ unless terminated by either Party in accordance with Section 3.

Early Termination

Estimated Benefits

You will receive monetary Bill Credits on your Utility bill that will result in savings of _____ off of the monetary value of the Bill Credits you receive.

Guarantees

The Agreement provides _____ savings off the monetary value of the Bill Credits applied to the Customer’s Utility bill. _____

Data Sharing Privacy Policy

We the Provider, or Servicer, may request from your Utility information about your energy consumption and electric bill, including but not limited to your outstanding balances, rate class, load zone, and Bill Credit allocations each month and any applicable balance for Bill Credits rolled over from a prior month.

By signing this Agreement, you authorize us to obtain and share such information with affiliates and third parties in order to service your account and fulfill the terms of your Agreement during the Term. Notwithstanding the above, you agree to execute any additional consent forms required by the Utility to authorize us to obtain and share such information. Your authorization is effective upon signing and will continue during the Term of this Agreement, unless you provide Provider with written notice that such authorization is revoked.

Please review Servicer’s privacy policy at _____ [WEBSITE] _____

Right to Cancel Without Penalty

You have the right to terminate the Agreement without penalty within three business days after signing the Agreement by notifying us at _____ [PHONE NUMBER] _____ or Email: _____.

See the attached Exhibit A for the Notice of Cancellation Form.

Customer Rights

If you have inquiries or complaints that the Provider is unable to resolve, you have the right to call the Department of Public Service Helpline at (800) 342-3377. You may file a complaint on the Helpline or by following the instructions at <http://www.dps.ny.gov/complaints.html>.

**Preparer Name and
Contact Information**

Sales Representative
Name:

Email:

Signature of Authorized Representative of Provider:

Signature of Customer:

Name:

Name:

Title:

Date:

Date:

SAMPLE

COMMUNITY DISTRIBUTED CREDIT PURCHASE AGREEMENT

Provider:

Company Name:

[PROVIDER NAME]
 (“**Provider**”)

Provider’s Authorized Agent:

[SERVICER NAME]

Telephone:

E-Mail:

Address:

Subscriber:

Name:

Telephone:

E-Mail

Service Address:

Effective Date:

Utility:

Utility Account Number(s):

Length of Agreement:

Savings Rate:

Solar Project:

The Agreement shall be effective from the Effective Date until [REDACTED]

[REDACTED] of Bill Credits
 (“**Savings Rate**”)

[PROJECT]
 (“**Solar Project**”)

This Community Distributed Credit Purchase Agreement (“**Agreement**”) is made and entered into as of the Effective Date, between Subscriber and Provider (each, individually a “Party” and collectively, the “Parties”). This Agreement shall continue for [REDACTED] unless terminated in accordance with the provisions of Section 3 of this Agreement.

Now, therefore, in consideration of the mutual premises, representations, warranties, covenants and conditions herein, the Parties agree as follows:

1. Allocation of Community Distributed Generation Credits.

- a. Provider owns, maintains and operates the Solar Project, which is part of the New York Public Service Commission’s Community Distributed Generation Program (“**CDG Program**”). The CDG Program allows customers of the Utility to receive dollar credits on their electricity bill (“**Bill Credits**”).
- b. You are purchasing Bill Credits, and not energy from the Solar Project. You will remain a customer of Utility and will be responsible for any outstanding charges on your Utility invoice not offset by Bill Credits. Provider is not a competitive energy supply company and this is not an Energy Supply contract.
- c. Provider will subscribe you to a percentage of the Solar Project’s generation, and will instruct Utility to assign Bill Credits associated with that generation to your account. This may result in Bill Credits equaling to up to 100% of your Utility invoice every month. The amount of Bill Credits you receive may vary month to month due to weather conditions, energy market pricing, governing regulations, and other variables.

- d. Subscriber authorizes Provider and Servicer to obtain Subscriber's energy consumption and electric bill information, including but not limited to your outstanding balances, rate class, load zone, and Bill Credit allocations each month and any applicable balance for Bill Credits rolled over from a prior month from the Utility. This information will not be disclosed to any other third party, except Servicer, unless otherwise required by law or consented to by Subscriber. This authorization will be effective from the Effective Date until the last day of the Term, as extended. Subscriber may rescind this authorization at any time by providing written notice to Provider that the authorization is revoked.
- e. Should Subscriber's account with the Utility ("**Electric Account**") be changed for any reason, including a change in address, Subscriber shall immediately notify Servicer and provide a copy of any written notification from the Utility. This Agreement shall be null and void upon notice of such change, if said change disqualifies the Subscriber under the terms of the CDG Program or the applicable Utility tariff. Subscriber will forfeit the right to receive Bill Credits after the date of change to its Electric Account if such notice has not been provided.

2. Payment for Community Distributed Generation Credits.

- a. For each monthly billing period, Subscriber will receive Bill Credits on Subscriber's Utility bill based on the electricity generated by the Solar Project. The value of the Bill Credits will be shared between the Provider and Subscriber. Subscriber's share will equal the Savings Rate multiplied by the Bill Credits received and this amount will appear as a deduction on Subscriber's Utility bill.
- b. If the amount of Bill Credits exceeds the amount of usage on Subscriber's electric Utility bill in the applicable billing period, the excess Bill Credit(s) shall be applied to Subscriber's subsequent electric Utility bill. Unapplied excess Bill Credits shall remain on Subscriber's account until applied by the Utility against amounts due by Subscriber. Provider makes no representations concerning the exact amount of Bill Credits that will be available during any billing period and may adjust Subscriber's allocation without notice to Subscriber. Provider also makes no representations concerning the value of the Bill Credits provided to Subscriber, which is calculated by Utility. Subscriber is responsible for any and all applicable federal, state, or municipal taxes.

3. Term and Termination of Agreement.

- a. This Agreement shall continue for [REDACTED] or until terminated in accordance with the provisions of this Section 3.
- b. Notwithstanding anything to the contrary contained herein, Subscriber may cancel this Agreement without charge or penalty within three (3) business days of executing this Agreement by contacting Provider pursuant to Section 13 or by providing notice in accordance with Exhibit A.
- c. [REDACTED] Subscriber remains responsible for payment of Bill Credits until such time as the Utility processes Subscriber's termination request, which shall be as soon as practicable after Subscriber's requested termination date.
- d. Provider may terminate this Agreement at any time by giving Subscriber written notice that it will no longer allocate Bill Credits to Subscriber. Such notice will specify the date as of which Bill Credits will no longer be allocated, and such date shall serve as the effective date of termination of this Agreement.

4. Mutual Cooperation/Dispute Resolution.

- a. If Subscriber, in good faith, wishes to file any complaint or dispute with Provider, Subscriber shall do so via written notice or electronic mail as soon as possible, at the contact information provided in Section 13 below. Subscriber may also file a complaint at any time with the New York State Department of Public Service at the following:

Office of Consumer Services, NYS Department of Public Service
3 Empire State Plaza, Albany, NY 12223

Phone: +1 (800) 342-3377

Hours of operation of the NY DPS as of the date of this Agreement: 8:30 AM- 4:00 PM.

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

5. **Subscriber's Acknowledgements.** Subscriber understands and acknowledges that:

- a. The Solar Project will deliver electricity to the Utility and not to Subscriber. Subscriber has no ownership or other interest in the Solar Project or the electricity generated by the Solar Project.
- b. The Utility will make all calculations and determinations regarding the amount of the Bill Credit to be applied to Subscriber's electric account, which calculations shall be made pursuant to applicable law and regulations.
- c. As of the Effective Date, the Solar Project may not yet be constructed and operating. Subscriber will not receive any Bill Credits until the Solar Project has been fully constructed, achieves commercial operation and begins generating electricity, and the Utility has processed Bill Credits associated with the Solar Project. Subscriber may be placed on a waitlist for an eligible Solar Project.

- e. Subscriber understands that this Agreement is a purchase contract and not a security registered under federal or state law. Subscriber is entering into this Agreement solely to receive Bill Credits as an energy-related commodity for use at the Electric Account, not for investment or speculation, not with a profit expectation, and not with a view to the resale of any benefits under this Agreement.

6. **Title.**

- a. As between Subscriber and Provider, Provider will claim and receive any and all tax, environmental or other credits, grants, subsidies, renewable energy credits, environmental attributes, carbon offset credits, rebates or other benefits related to the Facility or its output (collectively "**Incentives**"), and any other benefits of owning the Solar Project, both presently and in the future. Subscriber may not claim any Incentives.

7. **Assignment.**

8. **Force Majeure.** If Provider is unable to perform all or some of its obligations hereunder because of a Force Majeure Event, Provider 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 Provider's fault or negligence that could not be reasonably foreseen by either Party prior to the execution of this Agreement. Force Majeure Events shall include, without limitation, any failure to produce, deliver or receive the electricity generated by the Solar Project caused by: flood, fire, lightning, earthquake, tornado, hurricane, pandemic, other "Acts of God", war, riot, terrorism, insurrection, sabotage, work stoppage, strike or slow-down, any failure of the electrical grid, any failure of equipment not utilized by Provider or under Provider's control, or any failure of the Solar Project to produce electricity not caused by Provider's fault or negligence;
- b. Provider's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event, as determined by Provider in its sole discretion;

c. The Provider provides notice to Subscriber of the Force Majeure Event within a reasonable period of time after the occurrence thereof describing the particulars of the occurrence and the anticipated period of delay.

9. **HEFPA Rights.** Subscriber is entitled to protections pursuant to the Home Energy Fair Practices Act, Part 11 of Chapter 16 of the Rules and Regulations of the State of New York (“**HEFPA**”), which covers but is not limited to third party notification rights; a prohibition against security deposits in certain circumstances; limitations on estimated billing; limitations on back billing; and limitations on late charges. More information about Subscriber’s HEFPA protections are available online at <http://www.dps.ny.gov>. An annual notification of Subscriber’s rights under HEFPA will also be provided to Subscriber directly by the Utility. If applicable, Provider shall provide Customer with additional information about Customer’s HEFPA rights within a reasonable time and in accordance with the provisions of HEFPA Section 17(a).
10. **Limitation of Liability and Disclaimer of Express and Implied Warranties.** PROVIDER’S AND ITS AGENTS’ LIABILITY TO SUBSCRIBER UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, PROVIDER MAKES NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE SOLAR PROJECT OR PROVIDER OR ITS AGENTS’ OBLIGATIONS UNDER THIS AGREEMENT. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED.
11. **Miscellaneous.** This Agreement contains the entire agreement between the Parties with respect to the matters hereto, and there are no other agreements, written or oral, between the Parties regarding the subject matter hereof. This Agreement may be executed in one or more counterparts, all of which shall be deemed but one agreement. This Agreement is governed by the laws of the State of New York, without regard to the conflicts of laws principles thereof. This Agreement may not be amended except pursuant to a writing executed by both Parties. No delay or failure by any Party in enforcing any of such Party’s rights hereunder shall be deemed a waiver of any such right.
12. **E-mail Consent.** Subscriber authorizes Servicer and its representatives and agents to e-mail them regarding community solar services at any current or future e-mail that the Subscriber provides. Subscriber may revoke this authorization at any time by providing written notice thereof to Servicer at the email address provided for notices in Section 13 below.
13. **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 electronic mail to the address used by such Party, as applicable:

To Provider’s Authorized Agent	To Subscriber:
_____[SERVICER NAME]_____ Email: Phone:	Email: Telephone:

14. **TCPA Consent.** Subscriber authorizes Servicer and its representatives and agents to contact them regarding community solar services at any current and future phone numbers that the Subscriber provides using automatic dialing systems, artificial or pre-recorded messages, and/or SMS text messages, even if the Subscriber will be charged by their service provider(s) for receiving such communications. Subscriber may revoke this authorization at any time by providing written notice thereof to Servicer at the email address provided for notices in Section 16 below.
15. **Severability.** If any portion of this Agreement is determined to be invalid or unenforceable in any respect under applicable law, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of

the Agreement will be valid and enforceable to the fullest extent permitted by applicable law, unless such invalidity or unenforceability frustrates or negates an essential purpose of this Agreement.

16. **Survival.** Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including representations, warranties, remedies, or indemnities that, by their nature, should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

By signing this Agreement, Subscriber acknowledges that Subscriber has read and understands this Agreement and its Exhibits in their entirety, and that Subscriber has received a copy of this Agreement and all disclosure information.

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

PROVIDER:

SUBSCRIBER:

Name:

Title:

Date:

Name:

Title:

Date:

**EXHIBIT A
NOTICE OF CANCELLATION**

Effective Date of the Community Distributed Credit Purchase Agreement:

Please select termination type below:

<input type="checkbox"/>	TERMINATE THE COMMUNITY DISTRIBUTED CREDIT PURCHASE AGREEMENT, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE EFFECTIVE DATE	If this line is checked, the "Termination Date" shall be the date upon which this Notice of Cancellation is executed by the Subscriber.
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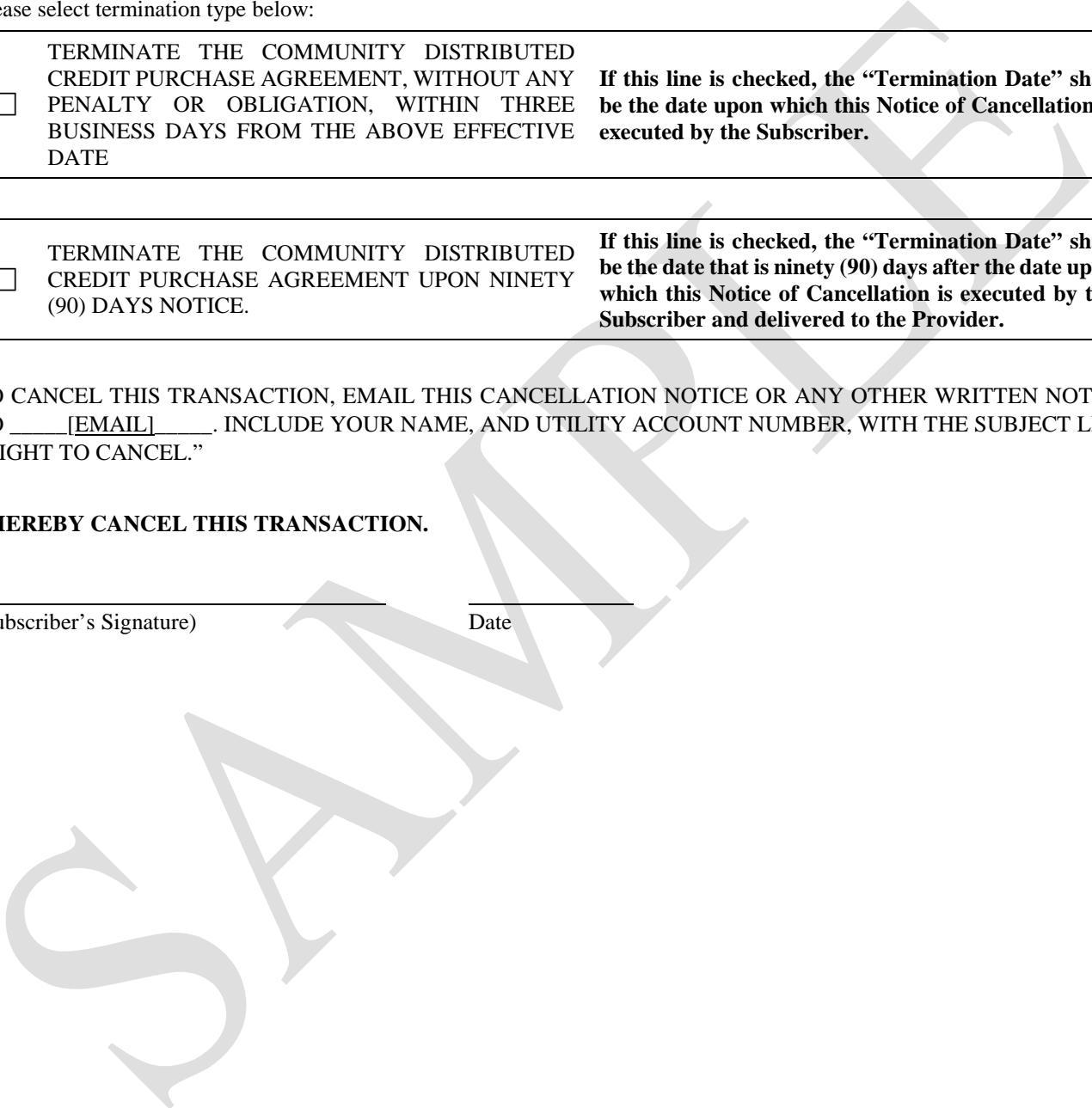
<input type="checkbox"/>	TERMINATE THE COMMUNITY DISTRIBUTED CREDIT PURCHASE AGREEMENT UPON NINETY (90) DAYS NOTICE.	If this line is checked, the "Termination Date" shall be the date that is ninety (90) days after the date upon which this Notice of Cancellation is executed by the Subscriber and delivered to the Provider.
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TO CANCEL THIS TRANSACTION, EMAIL THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO ____ [EMAIL] _____. INCLUDE YOUR NAME, AND UTILITY ACCOUNT NUMBER, WITH THE SUBJECT LINE "RIGHT TO CANCEL."

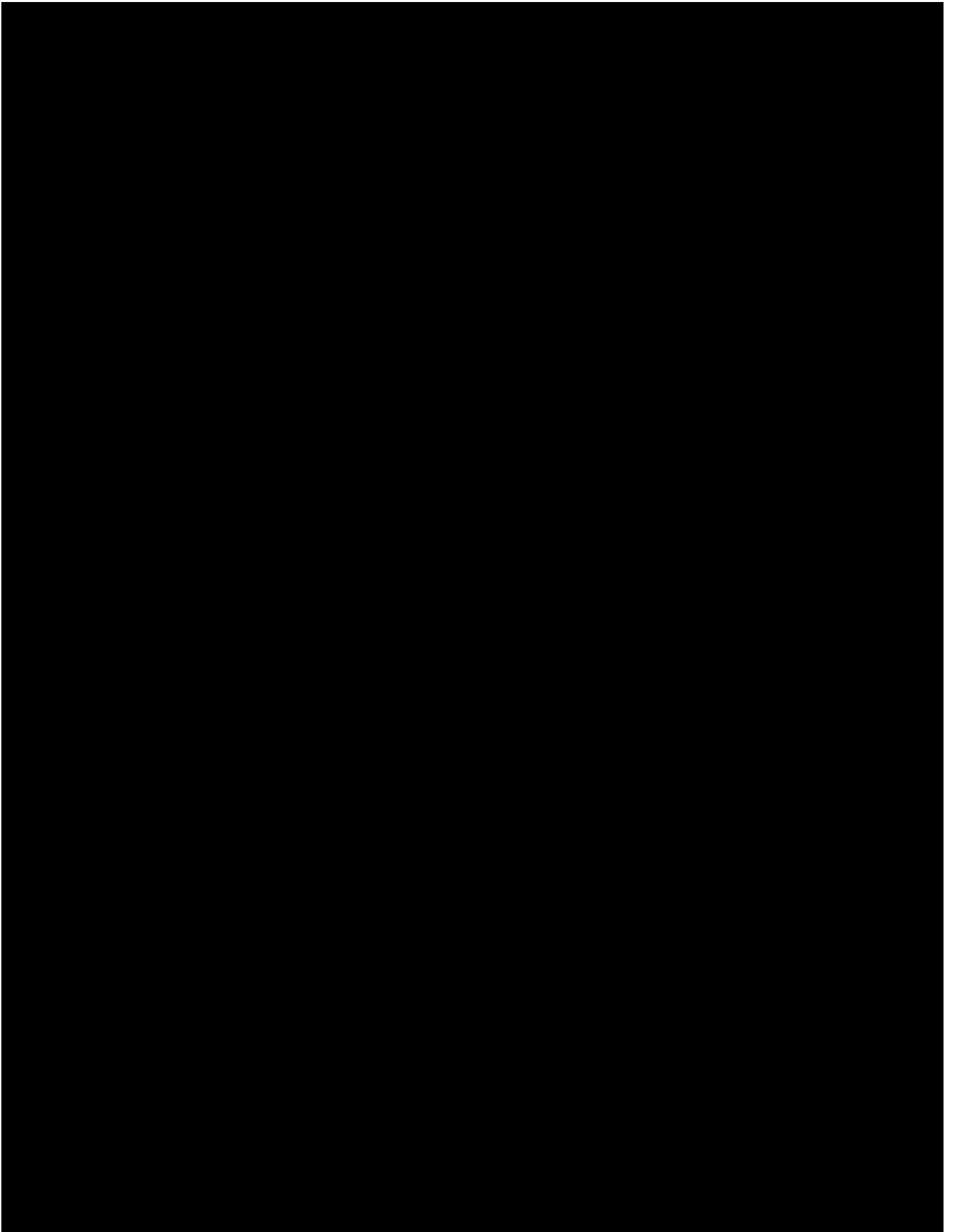
I HEREBY CANCEL THIS TRANSACTION.

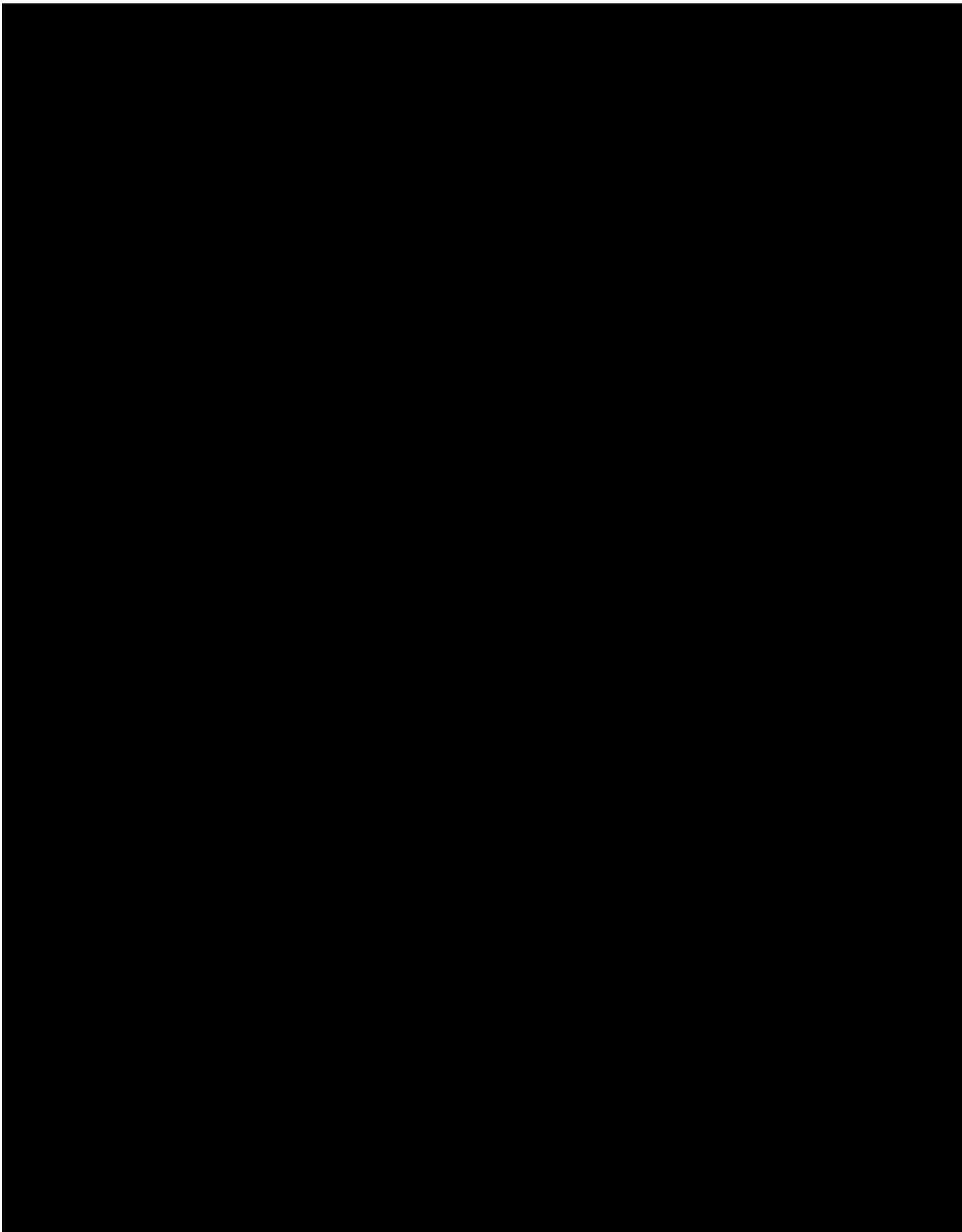
(Subscriber's Signature)

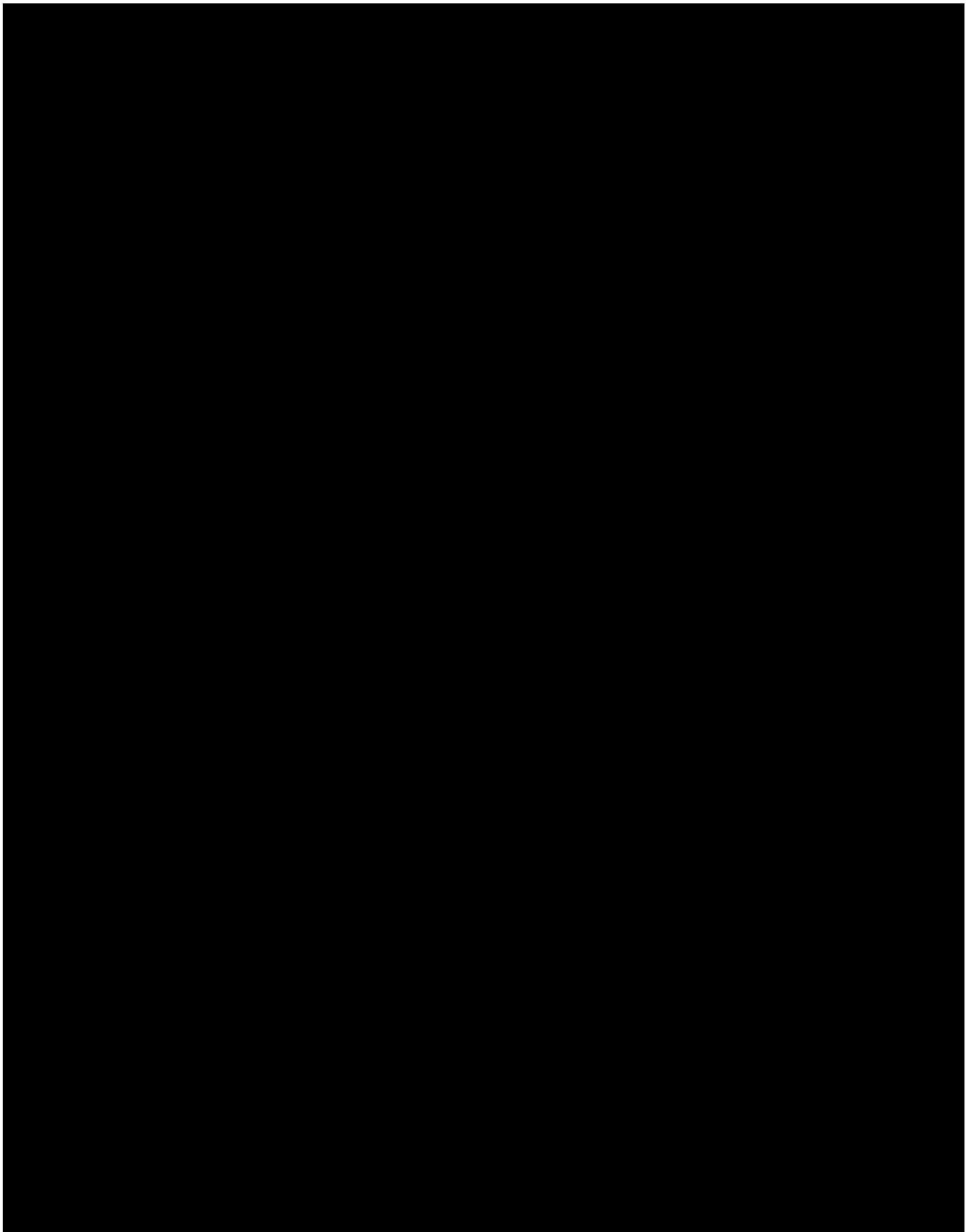
Date

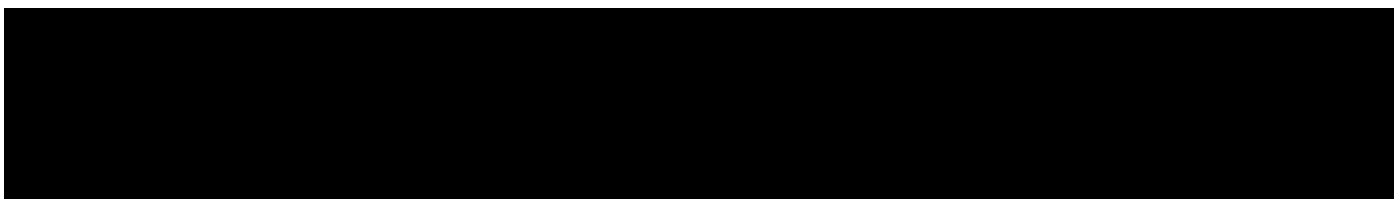


SAMPLE ANCHOR SUBSCRIBER AGREEMENT



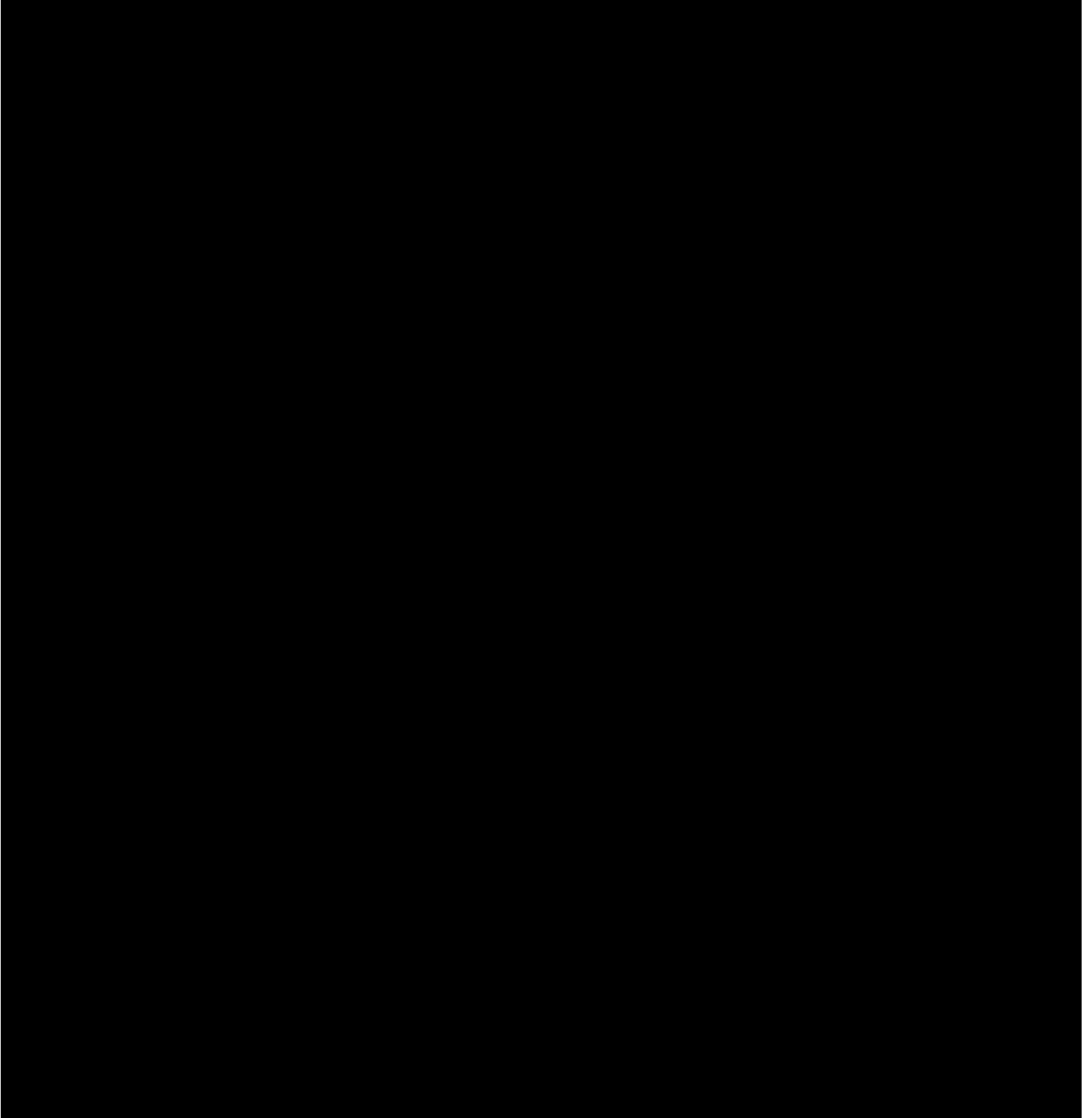






SAMPLE

Exhibit 1



SECOND SAMPLE ANCHOR SUBSCRIBER AGREEMENT

COMMUNITY DISTRIBUTED GENERATION CREDIT PURCHASE AGREEMENT

This Credit Purchase Agreement (the “Agreement”) is entered into this ____ day of ____ by and between _____, a _____ limited liability company (“Seller”) and _____ (“Buyer”). Seller and Buyer are each referred to herein individually as a “Party” and collectively as the “Parties”.

1. DEFINITIONS.

In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Affiliate” means any Person directly or indirectly controlling or controlled by, or under direct or indirect common control, with the first Person. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests) of such Person, whether by contract or otherwise.

“Agreement” means this Agreement and the exhibits and schedules hereto.

“Annual Expected Production Output” has meaning as defined in Section 3.5(e).

“Applicable Law” means any laws, statutes, ordinances, regulations, rules, notice requirements, Governmental Approval requirements, court orders, treaties or other international agreements, agency guidelines, principles of law, including the common law, and orders of any Governmental Authority, which at any time may be applicable to a Party’s rights and obligations hereunder, including without limitation, the construction, operation, and ownership of the System, and Credits distributed pursuant to the CDG Program.

“Bankruptcy Event” means with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than a Saturday, Sunday or any other day on which banks in New York are authorized or obligated to close.

“Buyer Default” has the meaning set forth in Section 10.2(a).

“Buyer Termination Notice” has the meaning set forth in Section 10.1(b).

“Buyer’s Account Information” means the Retail Service Address and Buyer’s account number associated with the Retail Service Address, as set forth in Schedule 1.

“Buyer’s Allocated Percentage” means Buyer’s allocated portion, stated as a percentage, of the Delivered Energy in a given month, as set forth in Schedule 1.

“CDG Program” means the community distributed generation program established by the New York State Public Service Commission in its July 17, 2015 *Order Establishing a Community Distributed Generation Program and Making Other Findings* issued in Docket No. 15-E-0082, together with any and all supplemental or subsequent Orders issued by the New York State Public Service Commission regarding such program, including those in Docket Nos. 15-E-0082 and 15-E-0751, and together with any and all Tariffs applicable to community distributed generation facilities.

“CDG Savings Rate” [REDACTED] set in accordance with the Net Crediting Program rules.

“Commercial Operation Date” means the date on which the System (i) has been fully constructed in accordance with Applicable Law, (ii) is fully operational and generating electricity at full capacity on a commercial basis, (iii) has been interconnected to the Utility’s electric distribution system, and (iv) has received all Government Approvals required to operate and generate electricity.

“Confidential Information” has the meaning set forth in Section 13.1.

“Contract Year” means each consecutive 12-month period commencing on the Commercial Operation Date.

“Creditworthy” means, if a non-governmental entity, a long-term credit rating (corporate or long-term senior unsecured debt) of, or, if a governmental entity, a general obligation bond rating of (a) Baa3 or higher by Moody’s, (b) BBB- or higher by Fitch IBCA, or (c) BBB- or higher by Standard and Poor’s; or, for non-governmental entities not rated by Moody’s, Fitch IBCA, or Standard and Poor’s, an equivalent credit rating as determined by Seller through review of such non-governmental entity’s (x) most recent three (3) years of audited financial statements with notes, or, if such audited financial statements are not available, (y) Buyer’s most recent three (3) years of (i) unaudited financials (prepared by an external accountant, if available) including income and cash flow statements, a balance sheet, and accompanying notes, if any, for each, or (ii) annual reports to the extent reasonably acceptable to Seller. For purposes of this Agreement, Buyer (or an assignee of Buyer) shall be deemed Creditworthy if Buyer delivers to Seller a parent guaranty (in a form reasonably acceptable to Seller) from a Creditworthy parent of Buyer (or such assignee, as applicable) covering all obligations of Buyer (or assignee of Buyer, as applicable) under this Agreement.

“Credit(s)” means the credits generated by the System that may be applied to offset Buyer’s Utility bill. Credits do not include any Solar Incentives or Environmental Attributes

“Credit Value” means the VDER Rate applicable to Buyer’s service classification in effect at the time of energy generation (in \$/kWh) determined by the Tariff in accordance with the CDG Program rules, as may be periodically revised under the Tariff. Credit Value does not include Solar Incentives or Environmental Attributes.

“Delivered Energy” means the amount of photovoltaic energy generated by the System and delivered to the Utility as measured at the Production Meter, net of any energy consumed by the System as delivered by the Utility.

“Effective Date” has the meaning set forth in Section 2.1.

“Energy Storage Program” means the battery energy storage program established by the New York State Public Service Commission in its December 13, 2018 *Order Establishing Energy Storage Goal and Deployment Policy* issued in Docket No. 18-E-0130, together with any and all supplemental or subsequent Orders issued by the New York State Public Service Commission regarding such program and together with any and all Tariffs applicable to battery energy storage systems.

“Environmental Attributes” means, without limitation, carbon trading credits, Renewable Energy Certificates or credits, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

“Excused Output” means the kWhs during the relevant calendar year that Seller was unable to produce electricity from the System due to the following reasons: (i) to Force Majeure; (ii) an emergency situation that threatens injury

to persons or property that was not a result of the acts or omissions of Seller; or (iii) the System being prevented from operating, or having its operations diminished or curtailed, due to the acts or omissions of Buyer or Utility.

“Force Majeure” has the meaning set forth in Section 9.1.

“Governmental Approval” means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses, and approvals from any Governmental Authority required under Applicable Law for construction, ownership, operation and maintenance of the System or for participation in the CDG Program.

“Governmental Authority” means any (a) federal, national, provincial, state, regional, local, municipal or other government, governmental or public department, central bank, court, tribunal, arbitrator, commission, board, bureau or agency, (b) subdivision, agent, commission, board or authority of any of the foregoing, or (c) any regulatory authority, agency, commission or board of any federal, national, provincial, state, regional, municipal, local or other government.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Site.

“Interconnection Obligations” has the meaning set forth in Section 6.1(c).

“Interconnection Procedures” has the meaning set forth in Section 6.1(c).

“Interest Rate” means [REDACTED]

“Invoice Date” has the meaning set forth in Section 5.2.

“kWh” means kilowatt-hour, a measure of energy.

“Lender” means, any Person who has made or will make a loan to or otherwise provide financing to Seller (or an Affiliate of Seller) with respect to the System, including any equity investors.

“Losses” means all losses, liabilities, claims, injuries, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses sought by a third party (including all reasonable attorneys’ fees and other reasonable costs and expenses incurred in defending any such claims or in asserting or enforcing any indemnity obligation).

“Membership List” means the form Seller files with the Utility to inform the Utility of (i) Buyer’s Allocated Percentage, and (2) Buyer’s Account Information.

“Net Crediting Program” or “Consolidated Billing Program” means a Utility program, current or future, established pursuant to the New York Public Service Commission’s (“PSC’s”) December 12, 2019 *Order Regarding Consolidated Billing for Community Distributed Generation* in Case 19-M-0463, as amended and supplemented by subsequent New York Public Service Commission orders, that in substance and with minor variations, creates a net crediting model whereby the Utility calculates the participating CDG Satellites’ Credits, remit a percentage of the value of such credits to the CDG Sponsor, less a Utility administrative fee retained by the Utility, and provide the remaining credit value on the CDG Satellites’ electric utility bills. “Party” or “Parties” has the meaning set forth in the preamble.

“Payment” has the meaning set forth in Section 5.1.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Production Meter” means the revenue quality meter installed, operated and maintained by the Utility to measure electricity generated by the System.

“Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Solar Incentives and the Credits.

“Replacement Agreement” means an agreement between Seller and a third party with a substantially similar eligible load as Buyer and meeting the qualifications listed in Section 12.3 whereby the third party assumes Buyer’s obligations under this Agreement for the all or a portion of the remaining Term following Buyer’s termination of this Agreement.

“Retail Service Address” is each address at which Buyer receives retail electric service from the Utility, as set forth in Schedule 1.

“Seller Default” has the meaning set forth in Section 10.1(a).

“Site” means the physical location where the System is to be constructed.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and all other solar or renewable energy subsidies and incentives, including without limitation payments under the NY-Sun Program administered by the New York State Research and Development Authority (NYSERDA), and community adder payments administered by NYSERDA

“System” means the solar photovoltaic panels and all associated equipment more specifically described in Schedule 1 that generates electricity, and any co-located energy storage system, as applicable.

“System Operations” means Seller’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

“Tariff” means the Utility tariff for electricity service for the System that, *inter alia*, implements the CDG Program and provides compensation for Credits generated by the System pursuant to the VDER Rate, as approved by the New York State Public Service Commission, together with any subsequent amendments and approvals thereto.

“Term” has the meaning set forth in Section 2.1.

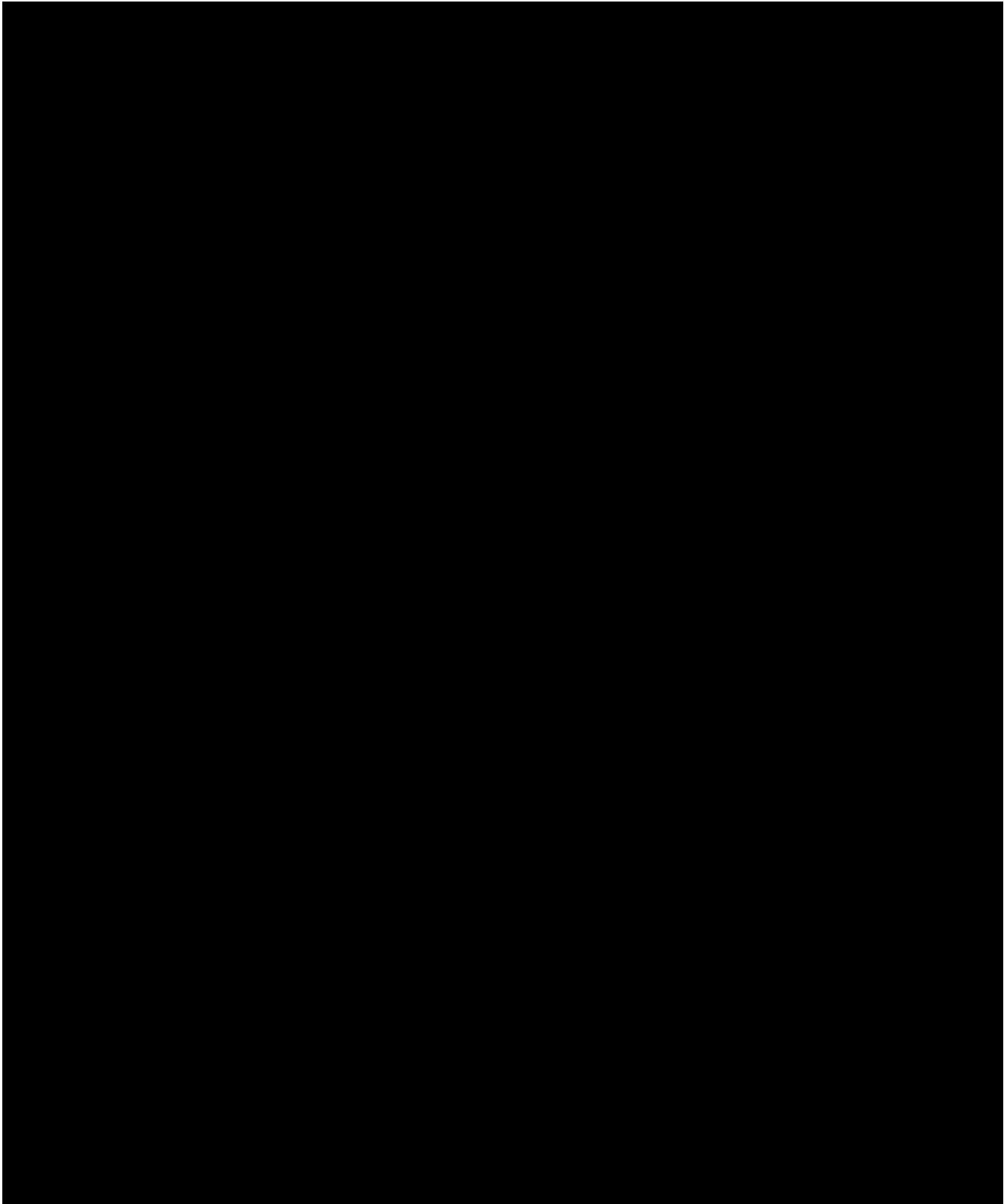
“Termination Fee” means a fee payable by Buyer resulting from a Buyer Default, or Buyer’s termination of this Agreement in a given year before the end of the Term, as calculated in accordance with Section 2.4 and specified in Schedule 2.

“Utility” means the distribution company set forth on Schedule 1.

“VDER Rate” means the Value of Distributed Energy Resources rate for monetary credits generated from electricity generated by distributed energy resources pursuant to the methodology known as the “Value Stack,” as established by the New York State Public Service Commission in its March 9, 2017 Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters, together with any and all supplemental orders, directives, or interpretations issued by the New York State Public Service Commission or New York Department of Public Service Staff regarding such rate, including those issued in Docket Nos. 15-E-0751 and 15-E-0082, and together with any Tariff(s) following therefrom.

1.1 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

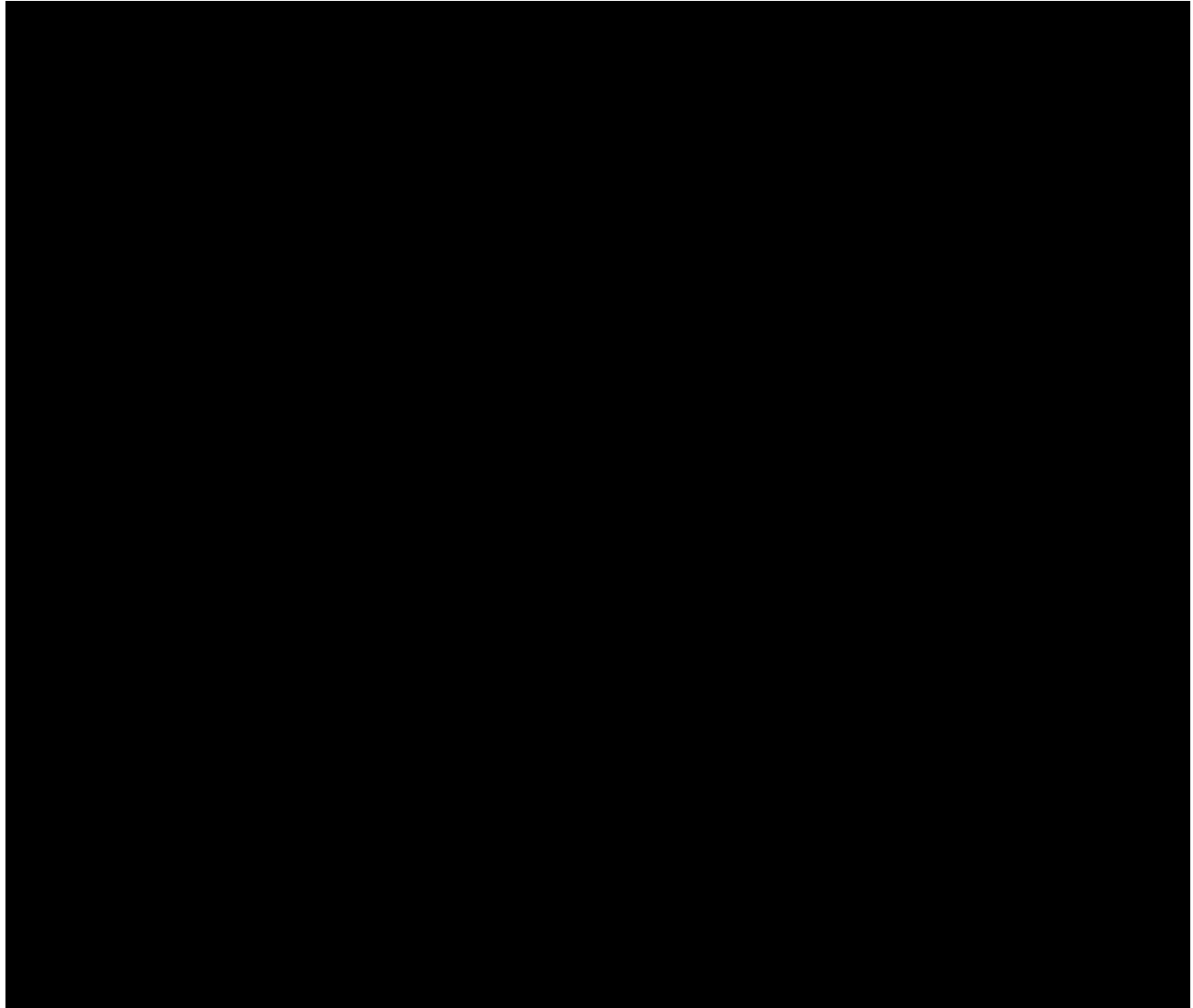
2. TERM AND TERMINATION.



3. SYSTEM OPERATIONS.

3.1 Seller as Seller and Operator. Throughout the Term, Seller or Seller's Lender shall be the legal and beneficial owner of the System at all times. The System shall remain the personal property of Seller or Seller's Lender. Seller will operate and maintain the System in accordance with the Tariff and the CDG Program. Any necessary repairs will be made by Seller at its sole cost and expense. Buyer will not have access to the System for any purpose. Buyer will have no ownership, rights, title, interest in or control of the System, and will have no rights or obligations with respect to the operation and maintenance of the System.

3.2 Seller as CDG Sponsor and Buyer as CDG Satellite. Throughout the Term, Seller shall be the CDG Sponsor and/or CDG Host, and Buyer shall be a CDG Satellite, as those terms are defined in the CDG Program.



(b) Capacity. Commencing on the Eligibility Date and continuing throughout the Term, Buyer shall subscribe to _____% of the nameplate capacity of the System, (the "Buyer's Allocated Percentage"), provided that such allocation does not exceed the CDG Program Limitations set forth in Section 3.5(c) of this Agreement. Seller shall update Appendix A with Buyer's Allocated Percentage in kW within thirty (30) days of the Commercial Operations Date. The estimated kWh expected to be generated from Buyer's Allocated Percentage on an annual basis is _____ kWhs. Seller may increase or decrease Buyer's Allocated Percentage at any time by providing written notice and an updated Appendix A to Buyer, if such increase does not violate the CDG Program Limitations.

(c) CDG Program Limitations. The CDG Program imposes certain requirements on participation in the CDG Program, which include the following: (i) Buyer's Allocated Percentage measured over twelve (12) months shall not exceed the program limitations set forth in the Tariff, and (ii) Buyer's Retail Service Address must be within the Utility service territory in which the System is located. Buyer's participation (or the participation of others at the same Retail Service Address) in other Utility programs relating to renewable energy payments, credits or rebates may further limit the Credits or capacity which Buyer can receive or which may be attributed to Buyer in connection with this Agreement and the CDG Program. The Utility is not obligated to provide Credits to the extent Buyer's Allocated Percentage exceeds the CDG Program Limitations. Seller reserves the right to decrease the Buyer's Allocated Capacity in order to maintain Buyer's compliance with the Program Limitation. The Program Limitation set forth in this Section 3.5 is derived from the CDG Program, and this Agreement will be deemed automatically amended to incorporate any changes to corresponding provisions in the Program.

(d) Calculation of Credits. Credits are calculated pursuant to the CDG Program by the Utility and are based upon readings at the Production Meter. Credits are applied solely by the Utility. [REDACTED]

[REDACTED] Buyer acknowledges and agrees that Seller's sole obligation regarding payment of Credits to Buyer is to request and use commercially reasonable efforts to require Utility to deliver Credits. Seller will provide the Utility with Buyer's Account Information so that the Utility can post the appropriate amount of Credits to Buyer's Utility bill, pursuant to the allocations shown in the Membership List. The duration, terms and conditions of the CDG Program, including the Credit Value used to determine Credits, are subject to the sole and exclusive control of the Utility, and Seller has not made any representations or warranties with respect to the expected duration of the CDG Program or the amounts to be provided by the Utility as Credits. Customer understands that (i) the Credits received by Buyer for a particular month will be reflected on Buyer's Utility bill as a monetary credit amount and not as an electricity quantity; and (ii) such Credits will be reflected on Buyer's monthly invoice according to the Utility's billing cycle, which may be approximately one (1) month after the month in which the Credits are generated by the System.

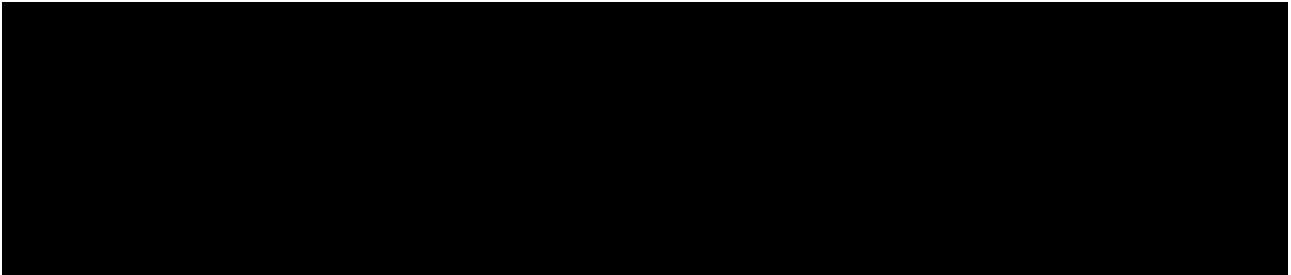
(e) Annual Expected Production Output. Seller estimates that the System should have delivered an "Annual Expected Production Output" for [REDACTED]

[REDACTED] These values are specified in Schedule 3.

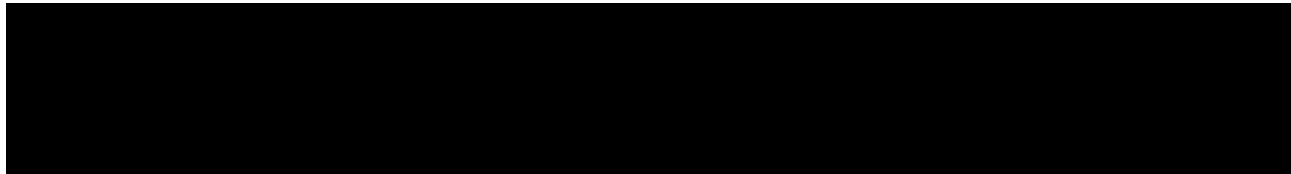
(f) Guaranteed Output. [REDACTED]

3.6 Environmental Attributes and Solar Incentives. Buyer's purchase does not include Environmental Attributes or Solar Incentives. Buyer disclaims all right to Solar Incentives or Environmental Attributes based upon the installation of the System, and shall, at the request of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section 3.6. Buyer agrees not to make any statement contrary to Seller's ownership of all Environmental Attributes and Solar Incentives associated with the System.

4. REALLOCATION; ADDITIONAL CAPACITY.



5. PRICE AND PAYMENT.

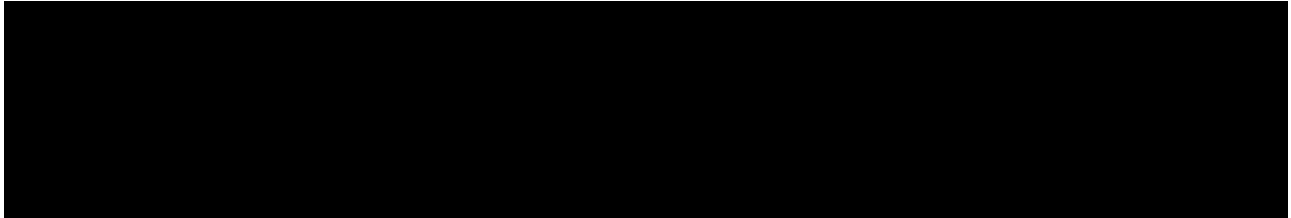


5.2 Invoices. Seller shall invoice Buyer on or before the thirtieth (30th) calendar day after receipt of each periodic billing statement provided by the Utility relating to the System (each such date an “Invoice Date”) for the Payment in respect of Credits corresponding with Buyer’s Allocated Percentage produced during the immediately preceding Utility billing cycle. Buyer’s first invoice under this Agreement shall be for the first full calendar month after the Eligibility Date in which Credits corresponding with Buyer’s Allocated Percentage are issued. For the avoidance of doubt, Buyer shall (i) neither receive nor be entitled to any Credits prior to the Commercial Operation Date, and (ii) have no obligation to make, or any liability for, Payments for Credits prior to the Commercial Operation Date.

5.3 Time of Payment. Buyer shall pay all undisputed amounts due hereunder within thirty (30) days after the date of Buyer’s receipt of the applicable invoice. Interest will be charged on late Payments at the Interest Rate until Buyer has fully paid the past due balance.

5.4 Method of Payment. Buyer shall make all Payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Seller. If Buyer does not have electronic funds transfer capability, the Parties shall agree to an alternative method for submitting Payments. Except for billing errors or as provided in Section 5.5 below, all Payments made hereunder shall be non-refundable, free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

5.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Payment of the disputed amount shall not be required until the dispute is resolved. If an amount disputed by Buyer is subsequently deemed to have been due by the Buyer pursuant to the applicable invoice, interest shall accrue at the Interest Rate on such amount from the date becoming past due under such invoice until the date paid. Inadvertent overpayments, including as a result of a disputed invoice resolved in Buyer’s favor, shall be returned promptly or deducted by the Party receiving such overpayment from subsequent payments.



5.7 Consolidated Billing under the Net Crediting Program. If the System is enrolled in the Utility's Net Crediting Program, or similar consolidated billing program, and Seller decides not to designate Buyer as an Excluded Anchor Customer, then Sections 5.1 through 5.6 of this Agreement will be omitted and not have effect. Upon enrollment in Net Crediting, the purchase and sale of the Credits under the Agreement would be administered through the Net Crediting Program

6. GENERAL COVENANTS.

6.1 Seller's Covenants. Seller covenants and agrees to the following:

(a) Notice of Damage or Emergency. Seller shall promptly notify Buyer if it becomes aware of any significant damage to or loss of the use of the System that could reasonably be expected to adversely affect the System.

(b) Governmental Approvals. While providing the Installation Work and System Operations, Seller shall obtain and maintain and secure all required Governmental Approvals to enable Seller to perform such obligations.

(c) Interconnection Fees. Seller shall be responsible for all costs, fees, charges and obligations required to connect the System to the Utility distribution system ("Interconnection Obligations"), including any fees associated with system upgrades and operation and maintenance carrying charges, as provided in the interconnection procedures of the Utility ("Interconnection Procedures"). In no event shall Buyer be responsible for any Interconnection Obligations.

(d) Compliance with Tariff and Interconnection Procedures. Seller shall cause the System to be installed, maintained and operated in compliance with the Tariff and the Interconnection Procedures.

(e) Buyer's Account Information. Seller shall be responsible for providing Buyer's Account Information to the Utility, in accordance with the Tariff. Seller shall take care to preserve the privacy expectations of Buyer, including by not publicly disclosing Buyer's Account Information. Seller shall not disclose such information to third parties, other than to the Utility or Governmental Authorities in connection with the CDG Program, unless Buyer has provided explicit informed consent or such disclosure is in accordance with the terms of Section 13.1 or compelled by Applicable Law.

(f) Communications. Seller shall designate a representative to be available to Buyer to address all operational matters under this Agreement. Seller shall use best efforts to respond to communications from Buyer within two (2) Business Days after receiving Buyer communications.

(g) Insurance Coverage. Seller shall maintain insurance coverage sufficient to repair, restore or rebuild the System in the event of significant damage or loss in the use of the System. Coverage shall include General Liability Insurance, which includes contractual liability and completed operations insurance for damages arising out of Seller's negligence. Seller shall provide proof of insurance upon Buyer's request.

6.2 Buyer's Covenants. Buyer covenants and agrees as follows:

(a) Consents and Approvals. Buyer shall ensure that any authorizations required of Buyer under this Agreement are provided in a timely manner. To the extent that only Buyer is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Buyer shall cooperate with Seller to obtain such approvals, permits, rebates or other financial incentives.

(b) Buyer's Account Information. To the extent Buyer's Account Information is not fully set forth in Schedule 1 as of the date of this Agreement, Buyer shall provide Seller with such information within thirty (30) days of the date of this Agreement.

7. REPRESENTATIONS & WARRANTIES.

7.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the date of this Agreement that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein;
- (f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and
- (g) no Bankruptcy Event has occurred and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in a Bankruptcy Event.

7.2 Specific Representations and Warranties of Buyer. Buyer represents and warrants to Seller as of the date of this Agreement that:

- (a) (i) Buyer is an "accredited investor" as that term is defined in Rule 501 of the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), or (ii) Buyer is an incorporated municipality or governmental subdivision with total assets in excess of \$5,000,000; provided, however, that notwithstanding the representation and warranty set forth in (i), the Parties agree that this Agreement is not, and is not intended to be, a security under applicable state and federal securities laws;
- (b) Buyer is the sole party in interest agreeing to purchase Credits corresponding with Buyer's Allocated Percentage and is acquiring such Credits for its own account and not with a view to the resale or other distribution thereof, in whole or in part, and agrees that it will not transfer, sell or otherwise dispose of such Credits in any manner that will violate applicable securities law. Buyer is aware that this Agreement and the Credits corresponding with Buyer's Allocated Percentage have not been registered under the Securities Act or registered or qualified under the securities laws of the state in which Buyer resides or is located based in part upon the representations of Buyer contained herein;
- (c) Buyer has been given the opportunity to ask questions of, and receive answers from, Seller concerning the terms and conditions of this Agreement and other matters pertaining to this Agreement, and has been given the opportunity to obtain such additional information necessary in order for Buyer to evaluate the merits and risks of the purchase of Credits corresponding with Buyer's Allocated Percentage to the extent Seller possesses such information or can acquire it without unreasonable effort or expense;
- (d) Buyer is a retail electric service customer of the Utility and the Retail Service Address is within the same Utility's service territory as the System;

- (e) Buyer is not an electric utility, generation company, aggregator, supplier, energy marketer, or energy broker; and
- (f) Buyer is Creditworthy.

7.3 Specific Representations and Warranties of Seller. Seller represents and warrants to Buyer as of the date of this Agreement that:

- (a) The System does not infringe on any third party's intellectual property; and
- (b) Seller has taken all required actions, if any, necessary to comply with the Public Utility Holding Company Act of 2005, as amended, and
- (c) Seller is not an electric utility subject to the rate regulation by any Governmental Authority.

7.4 Exclusion of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PERFORMANCE BY SELLER HEREUNDER SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO BUYER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER.

9. FORCE MAJEURE.

9.1 Definition. "Force Majeure" means (a) with respect to Seller, any act or event that prevents Seller from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of Seller and Seller had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums); and (b) with respect to Buyer, the repeal or modification by a Governmental Authority of Applicable Law enabling the CDG Program such that Buyer is no longer able to receive the anticipated Credits under this Agreement. Subject to the foregoing conditions, "Force Majeure" shall include, without limitation, acts of God or the public enemy; war; hostilities; riots; terrorism; abnormally adverse weather conditions not reasonably anticipatable by the Parties; fires; floods; volcanic eruptions; explosion; accidents; riots; vandalism; regional strikes or other significant regional labor disputes; pandemics; a Governmental Authority's actions or failure to act; a utility's actions or failure to act; or any event of force majeure as defined under the Interconnection Procedures.

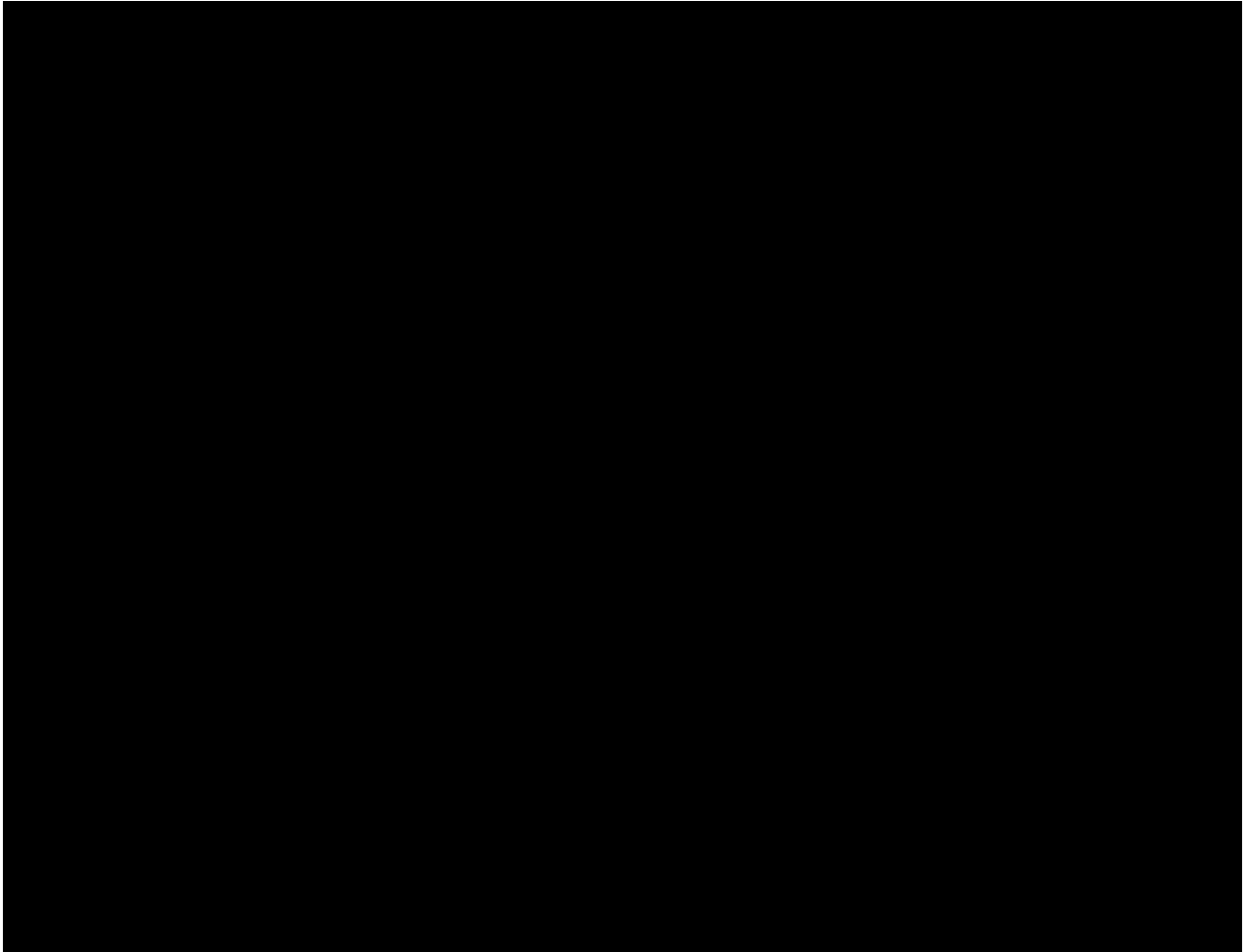
9.2 Excused Performance. Except as otherwise specifically provided in the Agreement, a Party shall not be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure; *provided* that such Party shall as soon as reasonably practical (i) notify the other Party in writing of the existence of the Force Majeure, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

9.3 Termination in Consequence of Force Majeure. If a Force Majeure shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a continuous period of ninety (90) days or more, then Seller shall be entitled to terminate the Agreement. Upon such termination for a Force Majeure, Buyer shall be responsible for making any and all payments up to the start of such Force Majeure event.

10. DEFAULT.

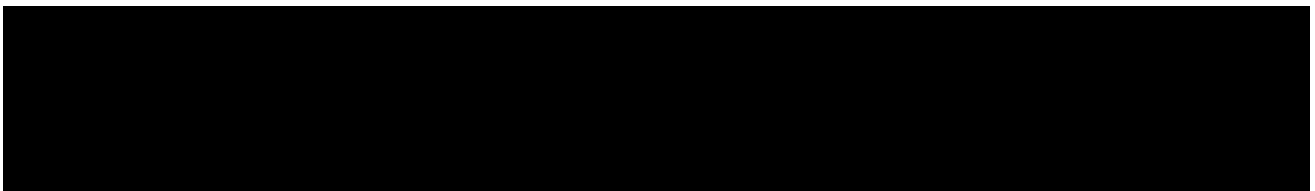
10.1 Seller Defaults and Buyer Remedies.

(a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a "Seller Default"):



10.2 Buyer Defaults and Seller's Remedies.

(a) Buyer Default. The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):



11. INDEMNIFICATION/LIMITATIONS OF LIABILITY.

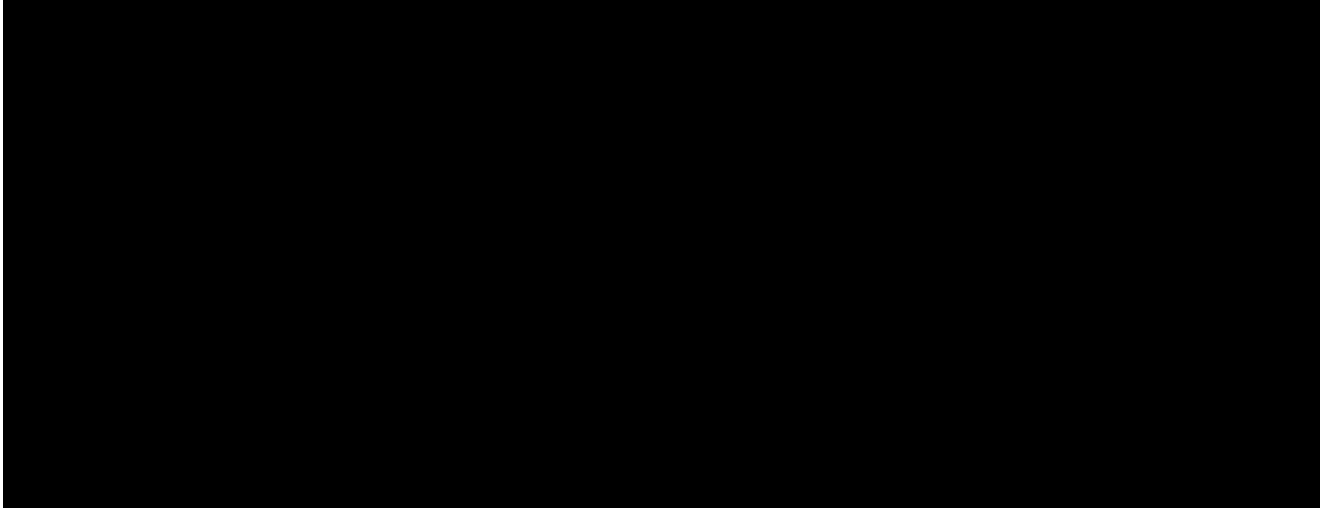
11.1 Except to the extent caused by the negligence, willful misconduct, or violations of Applicable Law of or by the Party seeking indemnification hereunder (the “Indemnified Party”), and subject to the limitations in Section 11.2, Section 11.3 and Section 11.4 below, each Party shall defend, indemnify and hold harmless the other Party (the “Indemnifying Party”), its Affiliates, and their respective officers, directors, employees, customers, agents and representatives from and against any and all Losses incurred by third parties arising out of or relating to: (i) material breach of any obligation, representation or warranty under this Agreement by the Indemnifying Party; or (ii) any negligent act or omission, willful misconduct, or violation of Applicable Law by the Indemnifying Party or its employees, contractors or agents in performance of its obligations hereunder, including Losses arising from personal injury, death, or damage to property arising therefrom.

11.2 Except for the Parties’ indemnity obligations under Section 11.1 and any payment of the Termination Fee required hereunder, neither Party will be liable to the other Party for general, special, punitive, exemplary, indirect, incidental or consequential damages arising from or out of this Agreement.

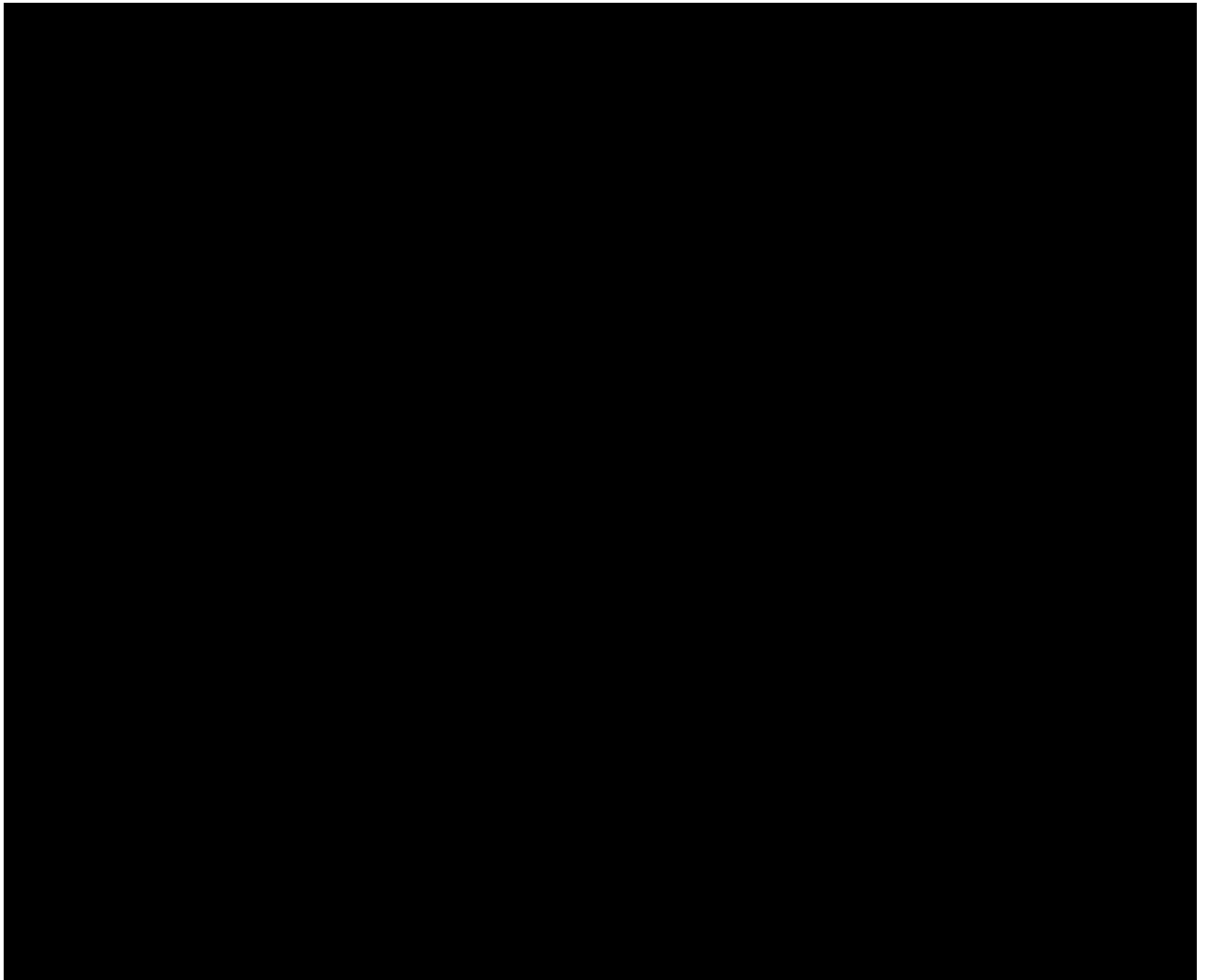
12. ASSIGNMENT.

12.1 Assignment by Seller. Seller may assign this Agreement along with all of Seller’s rights and obligations to any Affiliate or to a third party without the consent of Buyer, but with prompt notice, for any purpose, including in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity, or assignment of this Agreement as collateral security in connection with any financing of the System (including pursuant to a tax equity transaction); provided that for assignments third parties (other than Lenders), Seller shall provide Buyer with notice of such assignment together with information reasonably documenting that the assignee is Creditworthy and can perform Seller’s obligations hereunder. In the event that Seller identifies such secured Lender, then Buyer shall comply with the provisions set forth in Exhibit A to this Agreement. Any Lender shall be an intended third-party beneficiary of this Section 12.1.

12.2 Acknowledgment of Collateral Assignment. In the event that Seller identifies a secured Lender, then Buyer hereby:



12.3 Assignment by Buyer.



13. CONFIDENTIALITY.

13.1 Confidentiality Obligations. Each Party (“Recipient”) acknowledges that it may have had, and may in the future have, access to confidential information of the other Party (“Discloser”), including without limitation: (i) information concerning in any respect the business, products or services, business plans, methods, or strategies, financial information, advertising, promotional and marketing plans and strategies, customers, suppliers, employees, contractors and alliances, any proprietary, patented, licensed, copyrighted or trademarked information, technical information regarding the financing, design, operation and maintenance of the System, and/or technology and hardware and software systems (whether owned or under license) of Discloser or its Affiliates; and (ii) third party information that Discloser is obligated to keep confidential by Applicable Law, whether disclosed prior to or after the Effective Date, whether such information is disclosed orally, in writing or electronically, and whether or not specifically marked or confirmed as “confidential” or “proprietary” (collectively, “Confidential Information”). The existence and terms of this Agreement shall be deemed Confidential Information of each Party.

13.2 Ownership, and Use. Recipient agrees to keep strictly confidential all Confidential Information of Discloser, and that such Confidential Information is and shall remain the exclusive property of Discloser. Recipient may use Confidential Information only: (i) in connection with its performance under this Agreement; and (ii) for any other purpose expressly authorized in writing by Discloser. The disclosure of Confidential Information shall not constitute an express or implied grant or license to Recipient of any rights to or under Discloser’s patents, copyrights, trade secret rights, trademark rights or any other intellectual property rights.

13.3 Degree of Care; Access by Employees. Without limiting any other obligation hereunder, Recipient agrees to use the same degree of care to avoid the unauthorized disclosure, dissemination or use of Confidential Information of Discloser as Recipient uses to protect its own confidential information, but in no case less than reasonable care. Recipient shall restrict the possession, knowledge and use of Confidential Information to the directors, officers, employees, agents, Lenders and advisors to Recipient and any of its Affiliates (collectively, “Representatives”) who have a need to know such Confidential Information consistent with Recipient’s limited right to use the same hereunder. Prior to Recipient making any disclosure of Confidential Information to a Representative, Recipient shall advise the Representative of the confidential and proprietary nature of the Confidential Information and the terms and conditions of this Article 13. Any prohibited disclosure or use of Confidential Information by any Representative shall be deemed a breach hereof by Recipient.

13.4 Permissible Disclosures. Recipient may disclose Confidential Information of Discloser as required to comply with a valid subpoena or order of a Governmental Authority or court, or as otherwise may be required by Applicable Law, provided that Recipient gives Discloser prompt written notice to allow Discloser to seek a protective order or other appropriate remedy (except to the extent Recipient’s compliance with the foregoing would cause it to violate a court order or other legal requirement). Notwithstanding any other provision herein, but subject to the provisions of Section 6.1(e), the definition of Confidential Information excludes, and neither Party shall be required to hold confidential, any information that:

(a) was known to Recipient and with respect to which Recipient was under no confidentiality obligation at the time of disclosure by Discloser;

(b) is or becomes publicly available other than through the Recipient and without breach of this Agreement;

(c) is independently developed by the Recipient without the aid of or reference to any Confidential Information; or

(d) is received by or becomes available to the Recipient without restriction from a third party under no obligation of confidentiality, and who did not acquire such information through a wrongful or tortious act or disclose such information in breach of any confidentiality obligation.

13.5 Goodwill and Publicity. Seller agrees not to disclose any Buyer information in connection with Seller's marketing and promotional materials without the prior written consent of Buyer in each instance. Buyer agrees not to use Seller's name, logo, trademark, trade name, service mark, or other Seller intellectual property in any marketing or promotional materials without the prior written consent of Seller in each instance. Buyer shall submit to Seller for approval any press releases regarding the Agreement and shall not submit for publication any such releases without the prior written approval of Seller.

13.6 Return of Confidential Information. Upon request by Discloser, Recipient shall promptly return or destroy the originals and all copies in all media of all documents containing Confidential Information of Discloser then in Recipient's possession or control (including all electronically stored copies), except as may be required to be retained by law or for archival purposes. Any such Confidential Information retained by Recipient hereunder shall remain subject to the confidentiality obligations of this Agreement. If Discloser requests that Confidential Information be destroyed, an authorized representative of Recipient shall certify the same has been completed in writing to Discloser within ten (10) days of such request

13.7 Equitable Relief. Recipient acknowledges that disclosure or use of Confidential Information of Discloser in violation of this Agreement may cause irreparable harm to Discloser for which monetary damages may be an inadequate remedy and difficult to ascertain. Recipient therefore agrees that Discloser shall have the right to seek injunctive or other equitable relief for any violation of the confidentiality provisions of this Agreement by Recipient, in addition to any other rights and remedies that Discloser may have at law.

14. MISCELLANEOUS.

14.1 Survival. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including representations, warranties, remedies, or indemnities that, by their nature, should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

14.2 Entire Agreement. The Agreement (including the Exhibits and Schedules hereto) constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior contracts or agreements with respect to the subject matter hereof. There are no agreements, understandings, representations or warranties between the Parties other than those set forth herein and in the Agreement.

14.3 Amendments and Modification. Except as expressly provided in Section 4.1, this Agreement may be amended, supplemented or modified only by a written instrument duly executed by each Party. In the event any provision of this Agreement would, in the reasonable judgment of Seller, be reasonably expected to result in Seller's non-compliance with any provision in the Tariff (as the same may be amended or revised from time to time) or CDG Program rule, the Parties shall exercise commercially reasonable efforts to negotiate an amendment to this Agreement to conform the applicable provision(s) of this Agreement to the applicable provisions in the Tariff and/or CDG Program rules.

14.4 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in New York State shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

14.5 No Waiver. Any provision of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other provision of this Agreement on any future occasion, and, unless otherwise set forth in this Agreement, no failure or delay on the part of any Party in exercising any rights, powers or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other right, power or remedy thereunder. Failure on the part of a Party to complain of any act of any Party or to declare any Party in default, irrespective of how long such failure continues, will not constitute a waiver by that Party of its rights with

respect to that default. Subject to Section 11 of this Agreement, all remedies, either under this Agreement or by law or in equity, shall be cumulative and not alternative.

14.6 Relationship of the Parties. Nothing contained in this Agreement will be construed as constituting a joint venture or partnership between the Parties. Neither Seller nor Buyer shall have any authority to enter into agreements of any kind on behalf of the other Party and shall not have the power or authority to bind or obligate the other Party in any manner to any third party. Seller and Buyer shall be independent parties and shall discharge their contractual obligations at their own risk.

14.7 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with laws of the State of New York, without reference to choice of laws that would require the application of the law of another jurisdiction. All actions or proceedings arising in connection with this Agreement may be tried and litigated in a court of competent jurisdiction in the State of New York. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 14.7 by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in Section 14.11. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

14.8 Severability. Subject to Section 14.3, if any provision contained herein is invalid, illegal or unenforceable in any respect under any Applicable Law or decision, the scope of such provision shall be reduced to the extent necessary to make it enforceable or, if such reduction is not possible for any reason, such provision shall be severed from this Agreement entirely without effect upon the balance hereof and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way, and the Parties shall so far as practicable execute such additional documents in order to give effect to any provision hereof which is determined to be invalid, illegal or unenforceable.

14.9 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective authorized successors and permitted assigns.

14.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. Signatures delivered by facsimile or portable document format (pdf) shall be deemed to be original signatures.

14.11 Notices. Any notice to be given hereunder shall be in writing and shall be sent by registered prepaid first class mail, overnight courier or by facsimile copy to the persons or addresses specified below (or such other person or address as a Party may previously have notified the other Party in writing for that purpose). A notice shall be deemed to have been served when delivered by hand at that address or received by facsimile copy, or, if sent by registered prepaid first class mail or overnight courier as aforesaid, on the date delivered. The names and addresses for the service of notices referred to herein are:

Buyer:
[Company name]

[Insert Address]
Attn: [POC]

with a copy to:

Email: []

With an additional copy to:
[Company Name]
[Insert Address]
Attn: [POC]

Legal Notices/Service of Process to:
TBD

Seller:
[Company name]

[Company name]
c/o [add name]
[Insert Address]
Attn: [POC]

with a copy to:

Email: []

Financing Party:

[To be provided by Seller when known]

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the day and year first above written.

“SELLER”:

By: _____

Name:

Title:

“BUYER”:

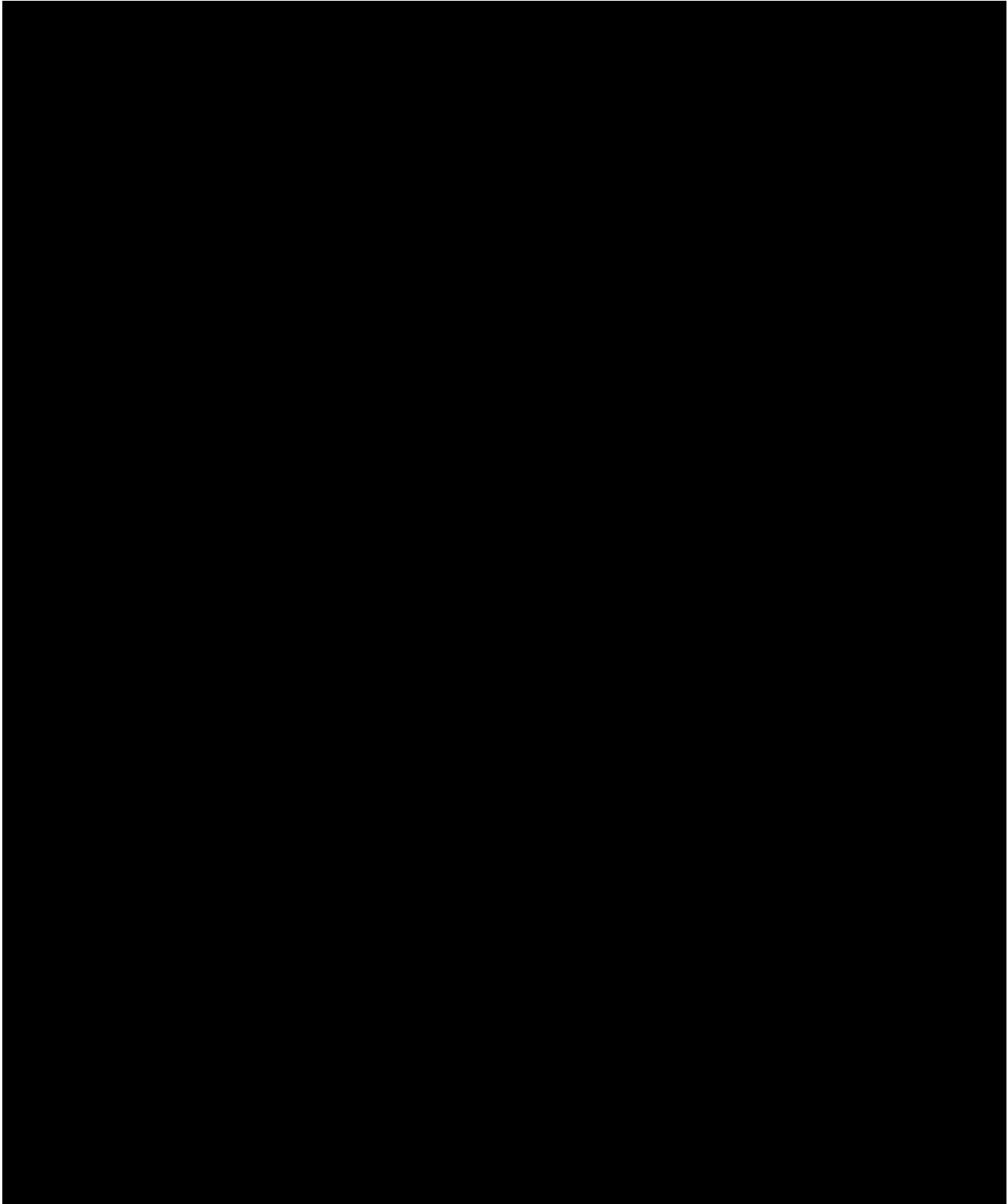
By: _____

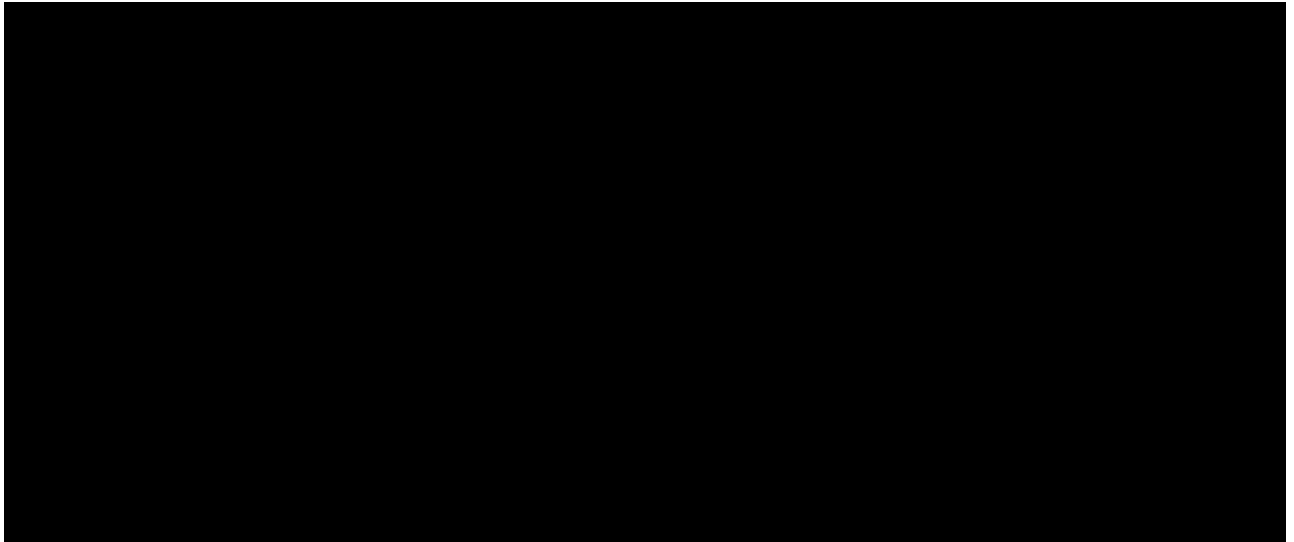
Name:

Title:

EXHIBIT A

Certain Agreements for the Benefit of the Financing Parties





SCHEDULE 1

Description of System

System Site Location: «SELLER»

«Location»

System Size: «Size_ac» kW (AC) [REDACTED]

«Size_dc» kW (DC) [REDACTED]

«Utility»

Battery Storage System: [insert capacity of and equipment description for any co-located battery storage system]

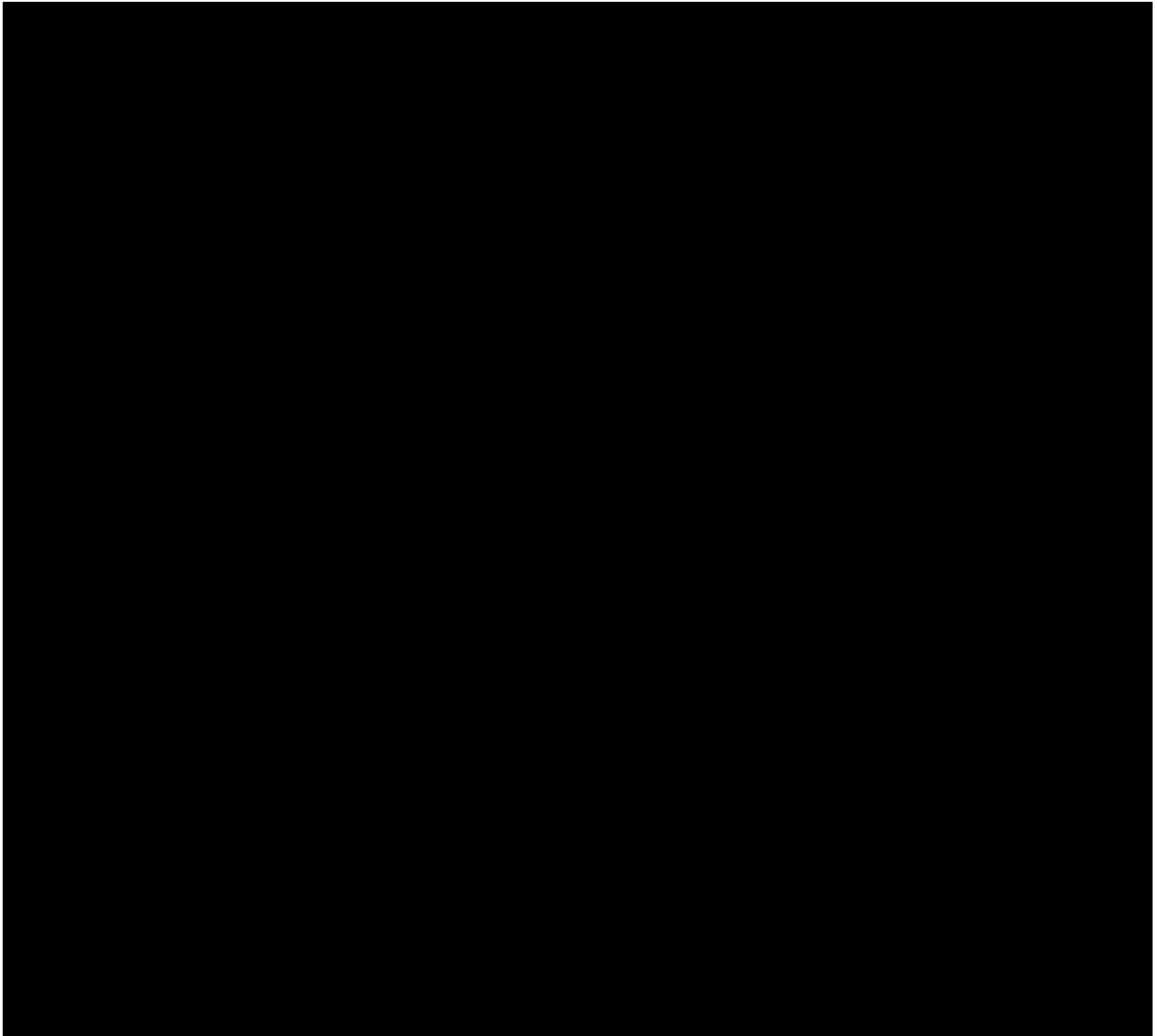
Utility:

Buyer's Allocation Table:

Site	Retail Service Address	Utility Account Number	Target Credit Value*	Site Allocated Percentage*
			\$	%

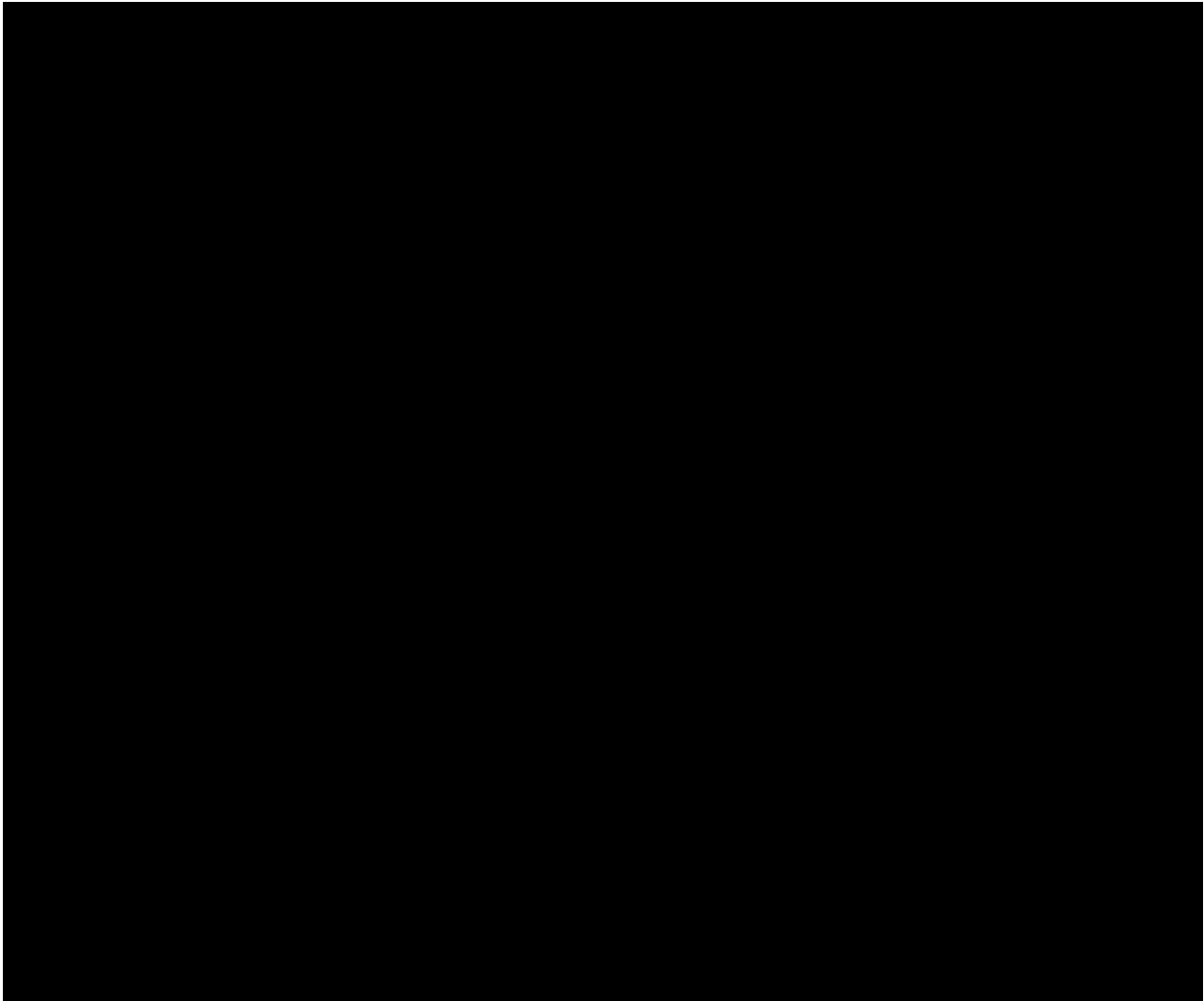
[REDACTED]

SCHEDULE 2



SCHEDULE 3

Annual Expected Production Output



Entities That Market on Behalf of Morgan Road Solar East, LLC

PowerMarket Economics, Inc. d/b/a PowerMarket