



Community Distributed Generation (CDG) Subscription Agreement

Subscriber	Subscriber
Provider	CertainSolar, Inc.
Distribution Utility	
Load Zone(s)	
Utility Account Type	Service Classification 2 (“SC2”) See Exhibits 6 and 7 for current and historical SC2 rates
Energy Consumption	Average of about ### kWh/month
CDG Facility	To be developed See Exhibit 2 for CDG facility
CDG Value	Value of Distributed Energy Resources (“VDER”) Value Stack See Exhibits 4 and 5 for current and historical VDER rates
Anticipated Production Start Date	
Initial Allocation	#.###%
VDER Discount	## percent
Term	## years
Administrative Fee	\$### due at contract signing
Payments	Annual/Quarterly/Monthly pre-payment with end-of-year true-ups

Community Distributed Generation Subscription Agreement

This Community Distributed Generation (“CDG”) Subscription Agreement (this “Agreement”) is entered into by the parties listed below (each a “Party” and collectively the “Parties”) as of the date signed by Provider below (the “Effective Date”).

Subscriber		Provider	
Name	Subscriber	Name	CertainSolar, Inc.
Address		Address	NYU Urban Future Lab 15 MetroTech Center, 19th Floor Brooklyn, NY 11201
Phone		Phone	(650) 906-8446
E-mail		E-mail	contracts@certainsolar.com

This Agreement sets forth the terms and conditions under which you subscribe at a discount to an allocation of the Bill Credits (“Bill Credits”) generated from one or more CDG facilities (“Facility” or “Facilities”) for the Term of this Agreement. “Utility” means Consolidated Edison Company of New York, Inc. (“Con Edison”). “Bills” are associated with your utility account served under Con Edison’s Service Classification 1 (“SC1”) or Service Classification 2 (“SC2”) rate schedules. “Bill Credits” offset your utility costs based on a formula determining the Con Edison’s Value of Distributed Energy Resources (VDER) tariff. This formula and tariff may change from time to time, as dictated by law.

In this Agreement, you may be also referred to as “you”, “your”, “Subscriber”, or “Customer”, and CertainSolar, Inc., together with its affiliates, successors and assigns, may also be referred to as “Provider”, “we”, “us”, or “our”.

This Agreement is a legally binding agreement with disclosures required by law, so please read everything carefully. This contract is subject to the State of New York Public Service Commission (“Commission”) Uniform Business Practices - Distributed Energy Resource Suppliers (UBP-DERS).

This Agreement sets forth the terms and conditions of the purchase and allocation of Bill Credits from the Facility or Facilities described in Exhibit 2.

The exhibits listed below are incorporated by reference and made part of this Agreement.

<u>Exhibit 1</u>	<u>General Terms and Conditions</u>
<u>Exhibit 2</u>	CDG Facility Descriptions
<u>Exhibit 3</u>	Credit Information
<u>Exhibit 4</u>	Current VDER Value Stack
<u>Exhibit 5</u>	Historical VDER Rate Components (Energy, Capacity)
<u>Exhibit 6</u>	Current Con Edison Service Classification 2 (SC2) Rates
<u>Exhibit 7</u>	Historical Con Edison SC2 Rates (2012-2018)

Purpose of the Community Distributed Generation Program

Provider has developed (or will develop) one or more Facilities located in the service territory of the Utility and a New York Independent System Operator (“NYISO”) Load Zone (Zone J – N.Y.C., Zone H – Westchester, or Zone I – Westchester) and is participating in the CDG program.

The CDG program provides opportunities for renters, homeowners, businesses, and municipalities who cannot or do not want to site fuel cell, solar, wind, or other eligible distributed energy generation systems on their own property to participate in shared energy projects. Under the CDG program, a utility receives power from a facility and issues credits to utility customers to apply against their energy costs in accordance with a Commission-approved process. These are called “Bill Credits.”

The CDG program has three main entities: the sponsor (in this case, Provider); subscribers (including you); and a utility (in this case, Con Edison). The sponsor (also called a “host”) is responsible for owning or operating the generation facility, coordinating the interconnection to and operation with the utility, and allocation of Bill Credits among the subscribers. Subscribers (also called “members” or “satellite customers”) are utility customers who receive Bill Credits on their utility accounts. Exhibit 2 lists the Facility or Facilities that will generate Bill Credits. You will receive an allocation of the Bill Credits and percentage of Bill Credits allocated to you. This is called your “Percentage Allocation” and is defined in Exhibit 1.

Through this Agreement, you obtain a share of the Bill Credits accumulated at Facility meters. The Provider will inform the Utility of the allocation of credits between all subscribers with respect to the Provider’s account(s). The Utility is responsible for distributing the Bill Credits from Provider’s account(s) to your and other subscribers’ accounts by applying them to offset your utility bill(s).

The value of Bill Credits you receive each billing period will be based on the share allocated to your utility account, the amount of energy generated by the Facility or Facilities during that billing period, and the value for that energy as calculated in accordance with the Value of Distributed Energy Resources (“VDER”) Value Stack (described in Exhibit 4). You will pay Provider for your allocation of Bill Credits calculated in accordance with Exhibit 1. Your price for Bill Credits is a discount from the offset value on your utility bill(s).

By executing this Agreement, you agree to allow us to provide your Bill Credits arising from the operation of any eligible Facility or Facilities owned or operated by Provider.

Exhibit 1
General Terms and Conditions

1. **Initial Term:** N (##) years, beginning on the date on which a Facility is able to provide power to the electrical grid and thus enable the Bill Credits to be generated (“Production Start Date”).
2. **Additional Terms:** Prior to the end of the initial term or of any applicable additional term, as defined below, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for a mutually agreeable period (each such additional period, an “Additional Term”). Such notice shall be given, if at all, no less than twenty-four (24) months before the last day of the initial term. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within sixty (60) days after receipt of the request. Failure to respond within such sixty (60) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement unless agreed otherwise in accordance with the notice and acceptance. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party’s offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
3. This Agreement shall not be effective unless and until it is signed by you and by us by executing Exhibit 1. We may reject this agreement before signing it for any reason including negative results of the credit evaluation. We shall have no obligations under this agreement unless and until we sign this agreement.
4. **Commencement Date & Term**
 - a. The term of this Agreement (“Term”) begins on the Production Start Date.
 - b. We will advise you by written notice of the Production Start Date.
5. **Allocation**
 - a. **Initial Allocation(s):** Provider will allocate a portion of the Bill Credits generated from Facility or Facilities based on your expected utility costs (including customer, delivery, commodity/supply, and sales tax charges). You agree to maintain service under Service Classification 2. You agree to maintain Con Edison as your energy supplier or to select a third-party energy supplier (“ESCO”) with consolidated billing (meaning that your ESCO payments are as part of your utility bill rather than as a separate ESCO bill). Your initial allocation will be determined by Provider after Provider receives your historical usage readings from the Utility. Your initial allocation will be set to cover 90-100% of your expected utility costs. Each billing period, you will be invoiced for Bill

Credits as from the product of (a) your Percentage Allocation and (b) the total VDER Value for a Facility as described below for that billing period, reduced by a N percent (##%) discount amount.

- b. **Changes to Allocation(s):** Provider may adjust your Percentage Allocation if there is a material change to your expected utility costs, including, but not limited to, a change in your kWh energy consumption, a change in your energy supplier rates, or a change in your delivery rates. Provider will adjust your Percentage Allocation annually after reviewing your actual utility consumption and costs to maintain Bill Credits that cover 90-100% of your utility costs. You may request a change Percentage Allocation if you expect a material change to your utility costs (such as installation of utility meters or selecting a different ESCO provider) by submitting a written request by electronic mail. In each billing period, if the Bill Credit is more than 100% of your utility costs, such excess Credit will be carried forward to be applied to future utility costs. In each billing period, if the Bill Credit is less than 100% of your utility costs, Subscriber will owe the balance to the utility.
- c. **Production and Crediting:** The kWh and kW production of the Facility or Facilities will be based on the reading of the utility meter located at each Facility each billing period. The value of Bill Credits for which Provider will invoice you (“Calculated Bill Credits”), will be calculated by multiplying your Percentage Allocation by the output, including per kWh components and per kW components, included in the VDER Value Stack formula, of the Facility or Facilities for that billing period (less Provider’s use).
- d. **Application of Bill Credits to Utility Bill:** The Utility is responsible for calculating and applying Bill Credits in accordance with its Tariff, based on the allocation information provided to the Utility by Provider. The New York State Public Service Commission established a mechanism to transition to a method to compensate distributed energy resources including, but not limited to, fuel cell, solar, and wind power. This mechanism is called the Value of Distributed Energy Resources (“VDER”). If you are billed under small residential (SC1) or non-residential (SC2) rates, the Utility will deduct from your invoice a sum equivalent to the calculated Bill Credits in accordance with VDER Value Stack formula for monetary crediting. The current components to be inputs into the current version of the VDER Value Stack are shown as Exhibit 4. The Parties agree that the VDER Value Stack is subject to change. We wish to make you aware, and you hereby acknowledge, that the Utility may make certain adjustments under the terms of its Tariff and the CDG program which can affect the Bill Credit the Utility provides electricity delivered to it. For this reason, the price established by the Utility for distributed energy resources delivered to it can be adjusted from time to time. Any inaccuracy in meter readings by the Utility can also affect the calculation of the Bill Credit. The Utility is solely responsible for resolving any

disputes with you about the applicable rate used to determine the amount of the credit to your bill.

6. **Payment**

- a. **Upfront Administration Fee:** Within thirty (30) days of Effective Date, a \$### administration fee is due. Provider will send you an electronic invoice. You agree to pay electronically with detailed provided by Provider.
- b. **Periodic Payment:** The payment period will be **annual/quarterly/monthly**.
- c. **Estimated Bill Credits:** For each year, with anniversaries set by the Production Start Date, Provider and Subscriber will agree upon an estimate of expected Bill Credit value, based on VDER Value Stack formula and expected allocation(s), consistent with Sections 5 above. Payments due for each payment period will be based on estimated Bill Credit values.
- d. **True-Up:** Within forty-five (45) days of each anniversary, the actual Bill Credit values will be compared with estimated Bill Credit values during the previous year. Any overpayment or underpayment will be applied as a refund or supplemental payment to the following payment.
- e. **Invoice:** Provider will send you an electronic invoice for your payment. You agree to pay electronically with details provided by Provider
- f. **Price:** Bill Credit Price will be reduced by discount from the Bill Credit value. Bill Credit Price will be reduced by **N** percent (**##%**).
- g. **Taxes:** Payments do not include any applicable federal, state, or local taxes. If applicable, you agree to pay, in addition to the specified Payment, any applicable federal, state, or local sales and use taxes, and any governmental or Utility charges on or related to this Agreement, as invoiced by us or imposed directly by your local jurisdiction, unless prohibited by law.

7. **Environmental Attributes and Environmental Incentives**

Unless otherwise specified herein, Provider is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Subscriber's purchase of Bill Credits under this Agreement does not include Environmental Attributes, Environmental Incentives, or the right to Tax Credits or any other attributes of ownership and operation of the Facilities, all of which shall be retained by Provider. Subscriber shall commercially reasonably cooperate with Provider in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the Facilities in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. If any Environmental Incentives are paid directly to Subscriber, Subscriber shall immediately pay such amounts over to Provider. To avoid any conflicts with fair trade rules regarding claims of fuel cell, solar or clean energy use, Subscriber, if engaged in commerce and/or trade, shall submit

to Provider for approval any press releases regarding Subscriber's use of fuel cell, solar, clean, renewable, or distributed energy and shall not submit for publication any such releases without the written approval of Provider.

- a. **“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Facility or Facilities, the production of electrical energy from the Facility or Facilities and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.
- b. **“Environmental Incentives”** means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the Facility or Facilities, environmental benefits of using the Facility or Facilities, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the Facility or Facilities or any Governmental Authority.
- c. **“Governmental Authority”** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity or any arbitrator with authority to bind a party at law.
- d. **“Tax Credits”** means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the Facility or Facilities

8. **Subscriber Default**

- a. You sell, pledge, assign, or transfer your rights or obligations under this Agreement without our prior written consent;
- b. You violate any other obligation under this Agreement and such violation continues for thirty (30) days after you receive written notice;
- c. You provide materially false or misleading information to us;
- d. You voluntarily commence bankruptcy, insolvency, reorganization, stay, or similar debtor-relief proceedings, or if any of the foregoing proceedings are brought involuntarily against you, or if you become insolvent or generally do not pay debts as they become due, or admit in writing your inability to pay debts, or make an assignment for the benefit of creditors. If you are in default under this Agreement, we have the right to take the following actions and any other action available to us under this Agreement or at law or in equity:
 - i. Take action to prevent loss, correct your default, or otherwise enforce performance of this Agreement, by court action or otherwise;
 - ii. Suspend performance;
 - iii. Terminate this Agreement. Provided that we will not terminate this Agreement if the default is due to non-payment, the matter is in dispute under and you are paying all non-disputed amounts.

If we choose to exercise a remedy, we are not restricted from exercising other remedies. If we choose not to exercise a remedy, we are not restricted from exercising that remedy in the future. If any of the remedies set out herein are considered an accelerated payment under this Agreement and if such payment is prohibited by law, we reserve the right to pursue any and all other remedies set out in this Agreement and those remedies available at law and in equity.

9. **Termination of this Agreement by Provider**

Termination Related to Facility or Facilities: We may terminate this Agreement on written notice to you at any time prior to the Production Start Date in the event that:

- a. We determine Your Credit is not reasonably satisfactory to us, we will not construct the Facility or Facilities, that the Facility or Facilities as developed will not be able to generate sufficient energy to supply your allocation, or that maintenance of this Agreement may interfere with the development or financing of the Facility or Facilities. If the Agreement terminates in this manner, neither Party will have any liability to the other Party.
- b. There is a Change in Law or Rate Structure that materially reduces Provider's compensation changes Provider's financial model. There is a binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means) or there is the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued);

- c. Any excusable event, such as a Force Majeure event or any other event which could not reasonably have been predicted or prevented by commercially reasonable measures, occurs outside of Provider's control in which case Provider will give Subscriber at least thirty (30) days' advance electronic notice of its intent to terminate.

10. Early Termination of this Agreement by the Subscriber

- a. Termination Within Three Business Days: You may terminate this Agreement, without any penalty or obligation, by e-mailing us a Notice of Cancellation within three (3) business days from the date we deliver a copy of the fully executed Agreement to you. We may deliver a copy of the Agreement by electronic means (e.g., via email or download).
- b. Termination at Any Other Time: At any other time following the three (3) day right of termination, and after Production Start Date, you must give us notice of termination at least eighteen (18) months before you intend to terminate the Agreement. If notice is not given within eighteen (18) months, you will remain responsible for compensating Provider for the Bill Credits which are allocated to your Utility account.
- c. Early Termination Fees: Before the 11th anniversary of Facility Start Date, \$###, and after the 11th anniversary of Facility Start Date, \$###, except in the conditions in Sections 10.a.

11. **Treatment of Bill Credits in Event of Termination**: If you terminate this Agreement, you may keep all Bill Credits you received and for which you paid Provider in full and we shall keep all payments we received before the effective date of the termination.

12. **Subscriber Information**: You irrevocably appoint Provider as your authorized agent to interact with the Utility, provide Customer Information to the Utility, and obtain Customer Information from the Utility for issues related to the Facility or Facilities and your Bill Credits. You agree to assist Provider in providing Customer Information that may be required by the Utility at any point. This authorization shall be valid during the Term and for a reasonable period thereafter, not to exceed twenty-four (24) months, for purposes of carrying out the transactions contemplated by this Agreement. This authorization does not restrict you from communicating with, instructing or directing the Utility with respect to other matters pertaining to electric service to your Utility Service Location, or asking the Utility questions regarding your participation in the CDG program. You also agree to assist us in promptly obtaining from the Utility any Customer Information which for any reason we cannot obtain directly from the Utility in a timely fashion.

13. Representations, Warranties and Covenants

- a. **General Representations and Warranties:** Each Party represents and warrants to the other the following as of the Effective Date:
- i. 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, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, 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).
 - ii. Such Party has obtained or will obtain all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party 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. **Indemnification and Limitations of Liability**

- a. **General:** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 13 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party.
- b. **Notice and Participation in Third Party Claims:** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The

Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 14.a unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 14.ab for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Limitations on Liability**

- i. **No Consequential Damages**: Except with respect to indemnification for third party claims pursuant to this Section 14 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Provider is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Subscriber, such recaptured amount shall be deemed to be direct, out of pocket, quantifiable, reasonably predictable and not indirect or consequential damages, and (ii) in the event that Provider is retaining the Environmental Attributes produced by the Facility or Facilities, and a breach of this Agreement by Subscriber causes Provider to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.
- ii. **Actual Damages**: Except with respect to indemnification for third party claims and damages that result from the willful misconduct of Provider, Provider's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Subscriber under this Agreement. The provisions of this Section 14.c.ii shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Provider must be brought within one (1) year after the cause of action accrues.

15. **Force Majeure**

- a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the

production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; unavailability of electricity from the Utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure third party supplier or of equipment under the control of the Party claiming Force Majeure.

- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Subscriber's ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred eighty days (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

16. **Assignment and Financing**

- a. **Assignment**: This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Provider may, without the prior written consent of Subscriber, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the Facility or Facilities to any Financing Party, (ii) directly or indirectly assign this Agreement and the Facility or Facilities to an affiliate or subsidiary of Provider, (iii) assign this Agreement and the Facility or Facilities to any entity through which Provider

is obtaining financing or capital for the Facility or Facilities, (iv) sell or otherwise cause the transfer of ownership of Provider and or otherwise sell or transfer Operator's ownership rights in this Agreement (v) assign this Agreement and the Facility or Facilities to any person succeeding to all or substantially all of the assets of Provider (provided that Provider shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Provider's obligations hereunder by the assignee). In the event of any such assignment, the Provider shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Provider's right and/or obligations under this Agreement, shall not result in any change to Subscriber's rights and obligations under this Agreement. Subscriber's consent to any other assignment shall not be unreasonably withheld if Subscriber has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining distributed energy generation systems comparable to the Facility or Facilities and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the Facility or Facilities and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

- b. **Financing**: The Parties acknowledge that Provider may obtain construction and long-term financing or other credit support from one or more Financing Parties. "Financing Parties" means person or persons providing construction or permanent financing to Provider in connection with construction, ownership, operation and maintenance of the Facility or Facilities, or if applicable, means, if applicable, any person to whom Provider(s) has transferred the ownership interest in the Facility or Facilities, subject to a leaseback of the Facility or Facilities from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 16.a(i)-(iv), Subscriber agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.
- c. **Successor Servicing**: The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Provider or its affiliates by Financing Parties, that such Financing Parties may require that Provider or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the Facility or Facilities and/or administrative services with respect to this Agreement (the "Successor Provider"). Subscriber agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

17. **Confidentiality and Publicity**

- a. **Confidentiality**: If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the Facility or Facilities or of Subscriber's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the Facility or Facilities. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 17.a, except as set forth in Section 17.b. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this 17.a by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 17.a. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 17.a but shall be in addition to all other remedies available at law or in equity.
- b. **Permitted Disclosures**: Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but solely to the extent of its public disclosure, and a

receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party lawfully obtained and without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

18. **Goodwill and Publicity**: Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

19. **Miscellaneous Provisions**

- a. **Choice of Law**: The laws of the state of New York shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees**: Any dispute arising from or relating to this Agreement shall be arbitrated in New York, New York. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing, Provider acknowledges that Subscriber has the right to have any dispute resolved through the complaint resolution process of the New York Department of Public Service, and Subscriber hereby preserves that right. 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 1-800-342-3377. You may file a complaint on the Helpline or by following the instructions at <http://www.dps.ny.gov/complaints.html>.

- c. The Parties acknowledge that this Agreement and General Terms and Conditions are in accordance with the Home Energy Fair Practices Act (“HEFPA”) and the Uniform Business Practices For Distributed Energy Resource Suppliers (“UPB-DERS”), and that the Subscriber is notified of its rights under HEFPA and UPB-DERS.
- d. **Notices:** All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document emailed or electronically sent in PDF form to it as an original document.
- e. **Survival:** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 13 (Representations and Warranties), Section 14 (Indemnification and Limits of Liability), Section 17 (Confidentiality and Publicity), Section 19.a (Choice of Law), Section 19.b (Arbitration and Attorneys’ Fees), Section 19.d (Notices), Section 19.h (Comparative Negligence), Section 19.i (Non-Dedication of Facilities), Section 19.k (Service Contract), Section 19.l (No Partnership), Section 19.m (Full Agreement, Modification, Invalidity, Counterparts, Captions).
- f. **Further Assurances:** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other commercially reasonable actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- g. **Right of Waive:** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party’s exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. 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 under this Agreement by Subscriber or Provider shall constitute a waiver of any other right or remedy

contained or provided by law. 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 under this Agreement 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.

- h. **Comparative Negligence**: It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- i. **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 knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public Utility or similar entity. 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 Provider 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 while ensuring that Provider does not become subject to any such regulation.
- j. **Estoppel**: Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- k. **Service Contract**: The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Subscriber will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of Bill Credits from the Facility or Facilities.

- l. **No Partnership:** 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 neither shall be considered the agent of the other.
- m. **Full Agreement, Modification, Invalidity, Counterparts, Captions:** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

Subscriber:

Subscriber

Name	
Address	
Phone	
E-mail	

Provider:

CertainSolar, Inc.

By: _____

As its: CEO

Date: _____

Date: _____