

**Sample Community Solar Subscription Agreement - For Residential and Small Business Subscribers**  
**COMMUNITY DISTRIBUTED GENERATION POWER PURCHASE AGREEMENT (PPA)**  
**DISCLOSURE FORM**

This document describes the key terms of your contract to purchase power from a community solar electricity generation system (the “Disclosure Form”). Read this document carefully so that you fully understand the contract. Under the contract, you will not own the system or any part of the system. You will purchase energy generated by the system during the term of the contract. In the event that the terms in this statement conflict with terms appearing elsewhere in your contract, the terms in this statement are controlling. This Disclosure Form is part of your contract (together, the “Agreement”).

<p align="center"><b><u>CUSTOMER INFORMATION</u></b></p> <p>Name: _____  Mailing Address: _____  _____  Email Address: _____  Local Electric Utility and Account #: _____</p>	<p align="center"><b><u>PROVIDER INFORMATION</u></b></p> <p>Name: GES (Community Solar) Developers, LLC  Address:  324 Pine Brook Road, Bedford, NY 10506  Telephone Number: <u>914-924-0051</u>  Email: <u>customer@GESDevelopers.com</u>  Form Prepared By: _____</p>
<p align="center"><b><u>ELECTRICITY PRICE</u></b></p> <p>[Price per kWh of electricity generated: \$ ___  Your payment each month will be this price multiplied by the amount of energy generated by the percentage of the System assigned to you]  OR  [Fixed Monthly PPA Payment: \$ ___]  OR  [Your Monthly Payment is _____ {explain factors that determine payment}.]  [Your first Monthly Payment is due on ____] OR  [Your first Monthly Payment is due on the ____ day of the first calendar month after the System is connected.]  [Your {Monthly Payment} OR {Price per kWh} will remain fixed for the term of your contract.]  OR [Your {Monthly Payment} or {Price per kWh} will increase each _____ {year or other period} by __%. The first increase will occur on _____ {date or milestone}.]</p>	<p align="center"><b><u>UP-FRONT PAYMENTS</u></b></p> <p>Amount Due at Contract Signing: \$ ___  Amount Due at _____ [provide date or describe milestone]: \$ ___  [Add additional lines as necessary to identify each payment]  [This section can be deleted if no up-front payments exist.]</p>

<b><u>TERM</u></b>	<b><u>OTHER CHARGES</u></b>
The initial term of your contract is ___ years [and ___ months]. Total number of Monthly Payments: _____	List of other charges: [include late payment fees, returned check fees, fees for using a specific payment mechanism, and all other charges or fees that may apply]
<b><u>INCENTIVES, CREDITS, AND REBATES</u></b>	
List of any credits, incentives, or rebates: [List credits, incentives, or rebates that customer will receive or will sign over to provider, and indicate whether Provider or customer is responsible for applying for each credit, incentive, or rebate and whether Provider or customer will receive each credit, incentive, or rebate]	
<b><u>INSTALLATION</u></b>	
System Location: _____ Approximate Interconnection Date: _____	
<b><u>SYSTEM SIZE AND GENERATION</u></b>	
Estimated Size of System in kilowatts DC (kWdc): ___ kWdc Portion of the System assigned to you: [___ %] OR [___ kWdc] Estimated gross annual electricity production in kilowatt-hours (kWh) from your portion of the System in the first year of your contract: _____ kWh Estimated annual electricity production decrease due to System aging (degradation): ___ % Estimated total electricity produced by your portion of the System during the term of the agreement: ___ kWh Estimated System Lifetime: ___ years [Your local utility will provide you with kWh bill credits for the energy generated by your portion of the System.] OR [Your local utility will provide you with bill credits based on the value of the energy for the energy generated by your portion of the System pursuant to the Value Stack defined in the utility tariff.]	
<b><u>SAVINGS ESTIMATE</u></b>	
[FOR SYSTEMS PRODUCING KWH CREDITS: The System is estimated to provide ___ kWh to you in the first year of operation. Your local utility's 3-year historical average for per kWh rates to customers like you is \$____.] OR [FOR SYSTEMS PRODUCING VALUE STACK DOLLAR VALUE CREDITS: The System is estimated to provide ___ kWh to you in the first year of operation. Based on the Value Stack defined in the utility tariff, the estimated value of each kWh is \$____.] Therefore, in the first year of operation you may save \$____ off your utility bill based on the System's generation. After PPA payments are taken into account, your net savings may be \$____. [OPTIONAL: Over ___ years, you may have net savings of \$____ off your utility bill based on the PPA payments, the System's generation, based on the expected annual electricity production decrease, and {an assumption that utility rates increase by ___% each year} OR {an assumption that utility rates do not increase}.] Actual savings may vary based on changes in utility rates and system production. Savings are not guaranteed except to the extent described below.	

**PRODUCTION GUARANTEE**

[This contract guarantees a minimum level of system performance, as detailed in the contract.] OR [This contract does not guarantee a minimum level of system performance or production of energy.]

**SAVINGS GUARANTEE**

[This contract guarantees that you will save at least a specified amount off of your utility bill each year, as detailed in the contract.] OR [This contract does not guarantee savings.]

**EARLY CANCELLATION**

If you cancel your contract early, you will be charged a fee of \_\$0.00\_\_\_\_\_

**RIGHT TO CANCEL WITHOUT PENALTY**

You have the right to terminate the contract without any penalty or obligation within three (3) business days of signing your sales contract by notifying Provider.

**DATA SHARING AND PRIVACY POLICY**

[If applicable: You agree to permit provider to request data from your local utility regarding your account and electricity usage.]

[If applicable: A privacy policy is included with your contract explaining how information related to your service will be protected and under what circumstances it will be shared.]

[This section can be deleted if not applicable.]

**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 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>.

**ENVIRONMENTAL ATTRIBUTE CLAIMS**

The New York Generation Attribute Tracking System creates certificates representing ownership of the attributes associated with the generation of energy, including environmental, social, and other nonpower qualities and tracks ownership of those certificates. For renewable generation, such certificates are often described as “Renewable Energy Certificates” or “RECs.” Certificates created by the New York Generation Attribute Tracking System may be eligible for use to meet voluntary or mandatory goals or compliance obligations related to renewable energy or clean power programs.

Certificates associated with the electricity produced by the System will be owned by [utility name or owner name] and will not be transferrable. Only [utility name or owner name] will be entitled to make claims or statements in regard to the nonpower attributes of the electricity generated by the System.

**ADDITIONAL DISCLOSURES**

[Additional information here at Provider’s option; this section can be deleted if not used. This section should not take up more than one page.]

Signature of Provider Representative:      Date:

Signature of Customer:      Date:

## Contract

1. **Parties.** This is a Community Solar Subscriber Agreement between GES (Community Solar) Developers, LLC ("GES") and you, an electric service customer of your local electric utility. For convenience, references to GES include the words "we" and "us." References to you include the words "you" or "Customer". References to this Community Solar Subscriber Agreement include the words "this Agreement."
2. **The Community Solar Garden.** GES, or its affiliates or partners, will construct, own, operate, and maintain a Community Solar Garden ("Solar Garden") described in the Disclosure Form. You are the electricity customer of record at one or more premises located in this NYISO zone served by your local electric utility. New York State law allows you to own a share of the solar energy produced from the Solar Garden and attribute your share of solar energy to one or more of your metered premises. We refer to the premises covered by this Agreement as your "Location" or "Locations."
3. **Customer's Production Capacity.** You are eligible to participate in GES's Solar Garden and have subscribed to the amount of production shown in kilowatts ("kW") as "**the portion of the system assigned to you**" in the System Size and Generation portion of the Disclosure Form, which we refer to as your "Production Capacity" in this Agreement. We measure the amount of solar energy produced by your Production Capacity in kilowatt hours ("kWh"), and refer to that energy in this Agreement as your "Solar Energy." Our obligations to each other are set out in this Agreement. GES also has obligations under the following related agreements.
4. **Community Distributed Generation Program.** The State of New York Public Service Commission issued an Order (Case 15-E-0082) establishing Community Solar. Under this Order, GES and your local electric utility take the following actions in the implementation of the solar garden program:
  - A. **GES's Responsibilities.** GES is responsible for operating the Solar Garden so that it produces solar energy; for delivering the solar energy and the associated renewable energy credits ("RECs") to your local electric utility; for providing your local electric utility with monthly information that identifies you, your Production Capacity, and your Solar Energy; and for sending you a monthly invoice for your Solar Energy payable directly to GES.
  - B. **Your Local Electric Utility's Responsibilities.** your local electric utility is responsible for accepting deliveries of your Solar Energy; for providing you with a credit in dollars for your Solar Energy on your retail electric service bill (your "Bill Credit").
5. **Bill Credit for Your Solar Energy.** Your local electric utility is responsible for accepting deliveries of your Solar Energy; and for providing you with a Bill Credit in dollars for your Solar Energy on your retail electric service bill as described in at the bottom of the **System Size and Generation** section in the Disclosure Form. The amount of your Bill Credit is based on various factors controlled by your use of energy, and rates as regulated by the New York State Public Service Commission ("PSC") also known as the Value Stack. A change in rates under the solar gardens program may increase or decrease the amount of bill credits for each ratepayer class, a dynamic that is explained in further detail in **Attachment A**. You agree that your obligation for the Monthly Payment is independent of the amount of your Bill Credit.
6. **Price and Payments.** The payment amount you owe GES ("Monthly Payment") is equal to the kWh of Solar Energy produced and delivered during a production month, multiplied by the price per kWh in effect during the year in which the production month occurs shown on the price list on **Attachment B** and above in the **Disclosure Form in the Electricity Price** section. You agree to pay the full Monthly Payment within fifteen (15) days after the date of our invoice. The amount of your Monthly Payment assumes payment through automated funds transfer. If we process payments by check, a ten dollar (\$10) handling charge will be added to each invoice. You have made an optional down payment of \$ \_\_\_\_\_, which has reduced the price of your Solar Energy as shown on the Attachment B price list. Your down payment is due within 15 days of signing this Agreement.
7. **Taxes.** The Monthly Payment does not include taxes. You agree to either pay us for any and all taxes assessed on the generation, sale, delivery, or consumption of your Solar Energy or your Bill Credits. The term "taxes" includes any federal, state, and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, or transaction tax, and other taxes, regulatory fees, surcharges, or other similar charges, but does not include any income taxes imposed on GES's revenues due to the sale of energy under this Agreement, which are solely GES's responsibility.
8. **Late Payments.** If you pay us late, we will charge you interest on the unpaid balance at the rate of three percent (3%) per month, or at any lesser maximum rate permitted by law, until you have fully paid your past due balance.
9. **Disputed Invoice.** In the event of a billing dispute or a disagreement involving GES's service, you should contact GES's Customer Care Center at the telephone number, address or email listed above in the Disclosure Statement cover sheet. You must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute. If the parties cannot resolve the dispute within forty-five (45) days, either party may avail itself of all remedies available under law or

equity. A dispute or complaint relating to a residential customer may be submitted by either party at any time to the DPS pursuant to its Complaint Hearing Procedures ("Procedures") by calling DPS at 1-800-342-3377 or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: [www.dps.ny.gov](http://www.dps.ny.gov). If you dispute all or a portion of an invoice from us, or if any other claim or adjustment arises under this Agreement, you agree to pay the undisputed portion when due and provide us with notice of the amount in dispute. If we do not resolve the dispute within thirty (30) days, the dispute will be resolved as provided in Section 32 of this Agreement.

- 10. Reimbursement for Underperformance.** If you have made a full prepayment for Solar Energy, as indicated on the cover page, you are entitled to a partial reimbursement in the event that our system underperforms. Immediately following 60th calendar month from the date on which you receive your first Bill Credit for your Solar Energy we will compare the (i) the total kWh of Solar Energy produced and delivered to you by us during the Term versus (ii) the total expected production as outlined in **Attachment B** (such difference, the "Delta"). If it is determined that the total amount of Solar Energy produced and delivered by us is less than the total amount of Solar Energy outlined in **Attachment B**, we will reimburse you for the difference by multiplying the Delta by the Reimbursement Rate for Underperformance listed on the cover page. **Otherwise, this contract does not guarantee a minimum level of system performance or production of energy.**
- 11. Consent to Disclose Utility Customer Data and INFORMATION RELEASE AUTHORIZATION.** You authorize GES to obtain and review information regarding your credit history from credit reporting agencies and the following information from your local electric utility: consumption history; billing determinants; utility account number; credit information; public assistance status; sales tax district; rate service class and subclass; electric load profile reference category or code; customer meter number(s); 12 months of customer data; and information pertaining to tax status and eligibility for economic development or other incentives. This information may be used by GES to determine whether it will commence and/or continue to provide energy supply service to you and will not be disclosed to a third party unless required by law. Your acceptance of this Agreement shall constitute authorization for the release of this information to GES. This authorization will remain in effect during the Initial Term and any Renewal Term. You may rescind this authorization at any time by providing written notice thereof to GES or by calling GES Developers at 1-914-924-0051. GES reserves the right to cancel this Agreement in the event you rescind the authorization.
- 12. Effective Date; Term.** This Agreement is effective upon execution. The term of this Agreement is \_\_\_ consecutive calendar months from the date of the first day of the first month following the initial production of kilowatt hours by the Solar Garden as measured at the "Production Meter." The responsibility of GES to facilitate the application of Bill Credits by your local electric utility will terminate after your local electric utility applies the Bill Credit for the \_\_\_th month of production of Solar Energy to your electric account.
- 13. Renewal of Contract and Cancellation.** **Under New York State law, if you are a residential customer, you have the right to terminate this Agreement without any penalty or obligation within three (3) business days of signing your sales contract by notifying Provider.** To cancel this contract, please contact GES at the contact details in the Disclosure Form cover page. There is NO PENALTY for cancelling the contract early. After the term of this agreement, as stated in Section 12, this agreement will automatically renew annually for terms of \_\_\_ consecutive months, up to cumulative total of 300 months (25 years). Attachment B provides pricing for renewal terms.
- 14. Customer Eligibility.** You agree that the following statements that establish your eligibility to purchase a share of the Solar Garden are true and complete in all respects, and you agree to notify us immediately if any of these statements ceases to be true:
  - A. Your Locations are within your local electric utility's NYISO service territory in which the Solar Garden is located.
  - B. Your local electric utility service account number for each Location is accurate as stated on the cover page of this Agreement and the name of the customer of record is identical to your name as stated on the cover page.
  - C. The generation of electricity for wholesale or retail sale is not the primary business at any of your Locations.
  - D. Neither your Production Capacity nor the RECs associated with your Production Capacity are more than forty percent (40%) of the nameplate capacity of the Solar Garden. Your Production Capacity is at least 1000 Watts.
  - E. Your Solar Energy will supply not more than one hundred percent (100%) of your average annual electricity bill at your Locations, reduced by any existing on-site renewable generation facilities at those Locations.
- 15. Renewable Energy Credits ("REC's").** The Order (Case 15-E-0082) establishing Community Solar requires us to provide your Solar Energy to your local electric utility in exchange for your Bill Credit and to provide your RECs so your local electric utility can comply with their renewable energy requirements under New York State Law. You hereby irrevocably assign and transfer to GES the right to receive and retain the REC payments from your local electric utility

attributable to your Solar Energy. There may be additional, non-power related benefits associated with your Production Capacity, such as environmental, tax, or future benefits. You agree that GES or its designee is entitled to exercise those benefits, regardless of their ownership. If we need you to sign any additional documents to evidence our agreement relating to your RECs and any other benefits that may be associated with your Production Capacity or Solar Energy, you agree to do so at our request.

**16. Changes in Your Participation.** Should your participation in the Solar Garden remain unchanged over the Term of this Agreement, the only action required of you is that you pay the Monthly Payment and let us know if there are any changes in your eligibility status. The following provisions apply if you want to change your participation by substituting new premises of yours for a Location covered by this Agreement, or increasing the amount of your Production Capacity.

**A. Substitution of New Premises.** You may substitute new premises of yours for any Location covered by this Agreement not more often than once every twelve (12) months by providing us with a request in writing in which you identify:

- i. The Location and the Production Capacity attributable to the Location that you want to transfer;
- ii. The name of your local electric utility customer of record, the account number, and the physical address, including county, associated with the new premises that will be covered under this Agreement after the proposed substitution, and the Production Capacity attributed to each meter for the purpose of applying Bill Credits; and
- iii. If the proposed transfer meets our eligibility requirements, we will provide you with the following documents which you will need to fully complete, execute, and return to us before we can approve the proposed substitution of Locations:
  - a) Amendment to this Agreement that reflects the requested substitution of Locations;
  - b) An updated Agreement, if required, completed and signed by you;

**B. Processing Changes.** Substituting Locations may take up to ninety (90) days to complete, depending on the accuracy of the information we receive and the timely completion and return by you of the documents we require. You agree to pay the Monthly Payment until you have fully complied with this process and we approve your proposed transfer or location substitution.

**C. Oversubscription Election.** You may elect to purchase additional production capacity from the Solar Garden if more capacity becomes available ("Oversubscription Capacity") at the rate of \$\_\_\_\_\_ cents per kWh, increasing at a rate of \_\_\_\_% per year. The amount of your request for Oversubscription Capacity, if any, is shown on the cover page of this Agreement. From time to time during the Term of this Agreement, we will allocate any excess production capacity from the Solar Garden in our sole discretion, taking into account all of the Oversubscription Capacity requests we have received. We will give you fifteen (15) days written notice if we accept all or a portion of your request for Oversubscription Capacity. All solar energy produced by your Oversubscription Capacity will become your Solar Energy for purposes of this Agreement.

**D. Wait List.** If the Solar Garden is fully subscribed, we will maintain a wait list of eligible customers of your local electric utility who desire to participate in the Solar Garden.

**18. Insurance.** We will insure the Solar Garden during the term of this Agreement in accordance with our contract with your local electric utility and applicable law, regulations, and tariffs. You are not responsible for insuring your Production Capacity from the Solar Garden.

**19. Customer Default.** The following events will constitute an event of default on your part (a "Customer Default"):

- A. Except as otherwise expressly permitted in this Agreement, you terminate this Agreement before the end of the Term;
- B. You fail to pay any amount when due under this Agreement and such failure continues for thirty (30) days after such amount is due;
- C. You are in breach of any representation or warranty, or fail to perform any material obligation as set forth in this Agreement and your breach or failure is not cured within thirty (30) days after you receive notice from us;
- D. You admit in writing your insolvency, assign your assets for the benefit of creditors, enter any bankruptcy or reorganization proceeding (either voluntary or involuntary), are otherwise adjudicated bankrupt or insolvent, or have all or substantially all of your assets subject to attachment, execution or other judicial seizure; or any similar event occurs; or

- E. You attempt to claim any RECs or non-energy related benefits in connection with Solar Energy that conflict with the terms of this Agreement.

**20. GES Default.** The following events will constitute a GES Default:

- A. We are in breach of any representation or warranty, or fail to perform any material obligation as set forth in this Agreement and our breach or failure is not cured within thirty (30) days after notice from you; and
- B. We admit in writing our insolvency, assign our assets for the benefit of creditors, enter any bankruptcy or reorganization proceeding (either voluntary or involuntary), are otherwise adjudicated bankrupt or insolvent, have all or substantially all of our assets subject to attachment, execution or other judicial seizure; or any similar event occurs.

**21. Our Remedies in Case of Your Default.** If you are in default under this Agreement, we may take any one or more of the following actions at our option and in our discretion. If the law requires us to do so, we will give you notice and wait the stipulated period of time required before taking these actions. We may:

- A. Cancel this Agreement and recover damages for your default (including without limitation our court costs, attorneys' fees, and other expenses relating to your default, to the fullest extent allowed by law);
- B. Take any reasonable action to correct or cover your default and to prevent or reduce our loss;
- C. Proceed, by appropriate court or other action, to enforce performance of this Agreement and to recover damages for your default (including without limitation our court costs, attorneys' fees and other expenses relating to your default, to the fullest extent allowed by law);
- D. Recover from you (i) all Monthly Fees owed; plus (ii) all taxes, late charges, penalties, interest, and all other sums then accrued or due and owing to GES; plus (iii) an assignment of your Production Capacity to GES, after which we will terminate this Agreement and release you from further obligation; and
- E. Use any other remedy available to us in this Agreement or by law.

**22. Your Remedies in Case of Our Default.** If we are in default and our default results in the failure or inability of the Solar Garden to produce Solar Energy, you may terminate this Agreement without further obligation.

**23. Financing Accommodations.** In order to finance the construction and installation of the Solar Garden, we will borrow money from a Lender ("Lender") who will require that we provide them with a security interest in the Solar Garden and in our contract with you and other customers. As a condition to providing financing, our Lender has asked that you agree to the following provisions. You understand that we may finance the acquisition, development, installation, operation and maintenance of the Solar Garden with financing or other accommodations from one or more financial institutions and that our obligations to the Lender may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first priority security interest in the Solar Garden (collectively, the "Lender's Security Interest"). In order to facilitate the necessary financing, you consent to our granting to Lender the Lender's Security Interest. You acknowledge and agree that: (i) you and all of your rights under this Agreement are and will be subject and subordinate to the Lender's Security Interest (and as later modified by any and all renewals, modifications, supplement, amendments, consolidations, replacements, substitutions, additions, and extensions); and (ii) no amendment or modification of this Agreement is permitted without Lender's prior written consent, with the exception of our approval of a change in your participation under this Agreement as set out in **Section 16**.

**24. Lender's Default Rights.** If we default under our financing documents with our Lender, the follow provisions apply:

- A. The Lender, through its security interest, will be entitled to exercise any of our rights and remedies under this Agreement. The Lender will also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Solar Garden.
- B. The Lender will have the right, but not the obligation, to pay all sums due from us under this Agreement and to perform any other act, duty or obligation required of us, and to cure any default by us in the time and manner provided by the terms of this Agreement. Nothing requires the Lender to cure any default by us (a "GES Default")

under this Agreement, to perform any act, duty or obligation of GES under this Agreement, unless the Lender has succeeded to our rights under this Agreement, but Customer hereby gives Lender the option to do so.

- C. If the Lender exercises its remedies under the Lender's Security Interest in the Solar Garden, including any sale by the Lender, whether by judicial proceeding or under any power of sale, or any conveyance from us to Lender (or its assignee) in lieu of a sale, the Lender will give you notice of the transfer or assignment of this Agreement. If Lender exercises these remedies, it will not constitute a default under this Agreement, and will not require your consent.
- D. Upon any rejection or other termination of this Agreement under any process undertaken with respect to us under the United States Bankruptcy Code, you agree to enter into a new agreement with Lender or its assignee under substantially the same terms as this Agreement if Lender requests you to do so within ninety (90) days of the termination or rejection of this Agreement.
- E. At our request, you agree to deliver to Lender and GES a fully executed Acknowledgement and Confirmation to Lender in the form of **Attachment C** to this Agreement, in which you acknowledge and confirm that the legal and beneficial ownership of the Solar Garden remains in GES, or its affiliate, and that the Solar Garden is the property of GES, or its affiliate.

**25. Lender's Right to Cure.** Regardless of any contrary term of this Agreement:

- A. You will not terminate or suspend this Agreement unless you have given the Lender prior written notice of your intent to terminate or suspend this Agreement. In your notice you will describe the event giving rise to a GES Default, and provide Lender with the opportunity to cure the GES Default within thirty (30) days after such notice or any longer period provided for in this Agreement. If the GES Default reasonably cannot be cured by the Lender within the period provided and the Lender commences and continuously pursues cure of such GES Default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional thirty (30) days. GES's and Customer's respective obligations will otherwise remain in effect during the cure period.
- B. If the Lender or its assignee (including any buyer or transferee) acquires title to or control of GES's assets and within the applicable time periods cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such the Lender or third party buyer or transferee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.
- C. At the request of Lender and/or its assignee, you agree to execute and deliver any document, instrument, or statement (but not including any payment) required by law or otherwise as reasonably requested by Lender or its assignee in order to create, perfect, continue or terminate the security interest in favor of Lender in all assets of GES, and to secure the obligations evidenced by Lender's Security Interest.

**26. Cooperation.** Upon a Customer Default or a GES Default, we agree to cooperate with each other so as to preserve our right to the RECs and other non-energy benefits attributable to your Production Capacity and Solar Energy.

**27. Federal Income Tax Matters.** We agree that, for Federal income tax purposes, the transactions described in the Agreement will be characterized as follows:

- A. You will purchase your Solar Energy from GES.
- B. Your Solar Energy purchase will be treated as a service contract under Internal Revenue Code Section 7701(e).
- C. We will provide your Solar Energy to your local electric utility as your agent
- D. You will receive a monthly Bill Credit from your local electric utility in exchange for your Solar Energy.
- E. Regardless of what any other provision of this Agreement may say to the contrary, you will not bear any significant financial burden if there is nonperformance by GES under this Agreement, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code. This prohibition also applies to any party related to you and includes you being deemed to bear any significant financial burden.
- F. Regardless of what any other provision of this Agreement may say to the contrary, you will not be deemed to receive any significant financial benefit if the operating costs of the Solar Garden are less than the standard of performance and/or operation set forth in this Agreement, as the phrase "significant financial benefit if the operating costs of the Solar Garden are less than the standards of performance or operation" is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code. This prohibition also applies to any party related to you.



- G. Regardless of what any other provision of this Agreement may say to the contrary, or what any other agreement between us may say to the contrary, you will not have an option to purchase, and you will not be required to purchase, any portion of the Solar Garden. This prohibition also applies to any party related to you.
- H. Regardless of what any other provision of this Agreement may say to the contrary, you will have no right to operate the Solar Garden, as that term is used in Internal Revenue Code Section 7701(e)(4)(A)(i). This prohibition also applies to any party related to you.

We agree that all tax returns, information statements, reporting requirements, and other filings related to taxes made by either of us will be made so that they comply with the tax characterizations described in paragraphs (a) through (h) above, unless the law in effect at the time requires us to do otherwise.

- 28. Force Majeure.** If we are unable to perform all or some of our obligations under this Agreement because of a Force Majeure Event, we will be excused from whatever performance is affected by the Force Majeure Event, provided that: (a) as soon as is reasonably practical, we provide you with notice describing the Force Majeure Event; (b) the suspension of our obligations is limited to the scope and the duration required by the Force Majeure Event; and (c) no obligation of ours that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event will be excused as a result of such Force Majeure Event.

“Force Majeure Event” means any event, condition or circumstance beyond the control of and not caused by GES’s fault or negligence. It will 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; tornado; hail; volcanic activity; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, power or voltage surge caused by someone other than us, including a grid supply voltage outside of the standard range specified by the utility’s equipment or products (but not to the extent that any such availability of any of the foregoing results from GES’s failure to have exercised reasonable diligence); and failure of equipment not utilized by us or under our control.

- 29. Termination upon Force Majeure.** If we are prevented from performing under this Agreement by reason of Force Majeure for a continuous period of three hundred sixty-five (365) calendar days during the Term, then either Party may terminate this Agreement, without liability on either of our parts to the other, upon thirty (30) days written notice. In no event shall a Force Majeure Event excuse a party from the payment of money or the performance of its indemnity obligations under this Agreement.

- 30. GES Indemnity.** Subject to the limitations contained in Section 31 we agree to indemnify, defend and hold you harmless from and against any damages or losses directly attributable to a material breach of our obligations under this Agreement due to our gross negligence or willful misconduct.

- 31. Limitations of Liability.** Except for our indemnity obligations under Section 30 with respect to third party claims, we will not be liable to you for general, special, punitive, exemplary, indirect, incidental or consequential damages arising from or out of this Agreement. Our total liability to you under this Agreement will in no event exceed the aggregate of all payments made by you under this Agreement. That amount will be your sole and exclusive remedy and all other remedies or damages at law or equity are waived. We are not responsible for any consequential, incidental, punitive, exemplary or indirect damages, lost profits or losses relating to this Agreement, in tort or contract, including any negligence or otherwise. **EXCEPT AS EXPRESSLY PROVIDED HEREIN, GES MAKES NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE SOLAR GARDEN OR GES’s OBLIGATIONS UNDER THIS AGREEMENT. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**

- 32. Dispute Resolution.** Each of us agree that to expedite and control the costs of disputes, the resolution of any dispute between us relating to this Agreement (“Dispute”) will be resolved according to the following procedures:
- A. Unless otherwise agreed in writing, we agree to continue to perform each of our respective obligations under this Agreement during the course of the resolution of the Dispute.
- B. Each of us agrees to first try to informally resolve any Dispute. Accordingly, neither of us will start a formal proceeding for at least forty-five (45) days after notifying the other in writing of the Dispute. Each of us agrees to send our notice to the billing address set forth on the first page of this Agreement.
- C. If we cannot resolve the Dispute informally, the Dispute will be resolved by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (referred to as the “JAMS Rules”) and under the rules set forth in this Agreement. If there is a conflict between the JAMS Rules and this Agreement, this Agreement will govern.

D. **NEITHER OF US WILL HAVE THE RIGHT TO LITIGATE THAT DISPUTE IN COURT, OR TO HAVE A JURY TRIAL ON THAT DISPUTE, OR ENGAGE IN DISCOVERY EXCEPT AS PROVIDED FOR IN THE JAMS RULES. THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING, EXCEPT TO THE EXTENT IT IS SUBJECT TO REVIEW IN ACCORDANCE WITH APPLICABLE LAW GOVERNING ARBITRATION AWARDS. OTHER RIGHTS THAT YOU OR WE WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.**

E. In arbitration, either of us may seek all remedies available to us under this Agreement as interpreted under Colorado law, without regard to conflict of laws principles. The costs of the arbitration will be split equally between us. Other fees, such as attorney's fees and expenses of travel to the arbitration will be paid in accordance with JAMS Rules. The arbitration will be held in Denver, Colorado, unless the Parties agree to another location in writing. In order to initiate arbitration, the initiating Party must take the following actions:

- i. Write a demand for arbitration. The demand must include a description of the Dispute and the amount of damages sought. A copy of a demand for arbitration can be found under ADR Forms at [www.jamsadr.com](http://www.jamsadr.com).
- ii. Send three copies of the demand for arbitration to: JAMS, 620 Eighth Ave., NYTimes Building, 34th Floor, New York, NY 10018.
- iii. Send one copy of the demand for arbitration to the other Party.

**33. REGULATORY CHANGES:** If at some future date there is a change in any law, rule, regulation or pricing structure whereby GES is prevented, prohibited or frustrated from carrying out the terms of the Agreement, at its sole discretion GES shall have the right to cancel this Agreement on fifteen (15) days' notice to you. In the event such change requires GES to increase its cost of electricity beyond that sold in the wholesale electricity markets, GES will provide you 30 days notice of such change, and you shall have the right to cancel this agreement. In the event you do not notify GES of your wish to cancel this agreement, GES shall have the right to charge such increased costs to you for the remainder of the term of the agreement, in accordance with the terms herein.

**34. Consumer Protection.** The services provided by GES are governed by the terms and conditions of this agreement. This agreement is governed by the Home Energy Fair Practices Act ("HEFPA"). GES will provide at least 15 calendar days written notice before cancelling service under this agreement. You may obtain additional information by contacting GES at 914-924-0051 or the NY Public Service Commission at 1-888-697-7728.

**35. Notices.** All notices and other communications under to this Agreement will be in writing and will be deemed given if sent by nationally recognized overnight courier or mailed by registered or certified mail (return-receipt requested), postage prepaid, to the address listed on the first page of this Agreement, or to such other address as the Party to whom notice is to be given may have furnished to the other Party in writing. Each party agrees to service of process by registered or certified mail, return receipt requested.

**36. Miscellaneous.**

**A. Entire Agreement; Amendment; Waiver.** This Agreement contains the entire agreement and understanding between us concerning this Agreement and supersedes any prior or contemporaneous agreement, either written or verbal. Any changes or amendments to, or waivers of, any provisions of this Agreement will only be effective if they are in writing and signed by both of us. Our failure at any time to require strict performance by you of any of the provisions of this Agreement will not waive or diminish our right thereafter to demand strict compliance by you of that provision or of any other provision of this Agreement. If any provision of this Agreement is determined to be unenforceable, the remaining provisions will be enforced in accordance with their terms or will be interpreted so as to make them enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed, which will include without limitation the obligation to make payments.

**B. Binding Effect.** This Agreement will be binding upon and inure to the benefit of each of us, and to our successors and permitted assigns, but nothing in this Agreement, express or implied, is intended to confer or will confer upon any other entity or person any benefits, rights or remedies except as expressly set forth in this Agreement.

**C. Authority.** You have the full power and authority to execute and deliver this Agreement and to perform your obligations hereunder. Your execution and performance of this Agreement and of your obligations under this Agreement have been duly authorized by all necessary action.

**D. Marketing and Promotional Materials.** We will have the right to use graphical representations or photography of the Solar Garden in our marketing and promotional materials. You agree to the use of your name and logo, if applicable, in our marketing materials in connection with the Solar Garden and any future Community Solar Garden or similar projects undertaken by GES. We agree not to disclose any other information in connection with our marketing and promotional materials.

- E. **Assignment.** GES may assign this Agreement along with all of our rights and obligations to any affiliate or third party without notice, for any purpose, including, the collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity. You may not assign your interests in and delegate your obligations under this Agreement without the express written consent of GES.
- F. **Counterparts.** This Agreement may be signed in two or more counterparts with the same effect as if each of us had signed and delivered the same counterpart, and shall become operative when each of us has signed and delivered at least one counterpart. Each counterpart will be deemed to be an original for all purposes, and all counterparts together constitute one Agreement. Delivery of a counterpart of this Agreement by facsimile or other electronic means will be good and sufficient delivery, and a facsimile or other electronic transmission evidencing execution shall be effective as a valid and binding agreement between us for all purposes.
- G. **EMERGENCY SERVICE CONTACTS:** In the event of an electric power outage or other emergency, please use the following toll-free numbers to directly contact your utility:

Rochester Gas & Electric 1-800-743-1701

National Grid 1-800-892-2345

Central Hudson Gas & Electric 1-800-527-2714

Orange & Rockland 1-877-434-4100

Consolidated Edison 1-800-752-6633

NYSEG 1-800-572-1131

PSE&G Long Island 1-800-436-PSEG

I have read this Agreement and its Attachments in their entirety, and I acknowledge that I have received a complete copy of this Agreement.

GES (Community Solar) DEVELOPERS LLC \_\_\_\_\_, "Customer"

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

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

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Attachment A

### The Value Stack – A primer on how solar Bill Credits are derived and calculated

Extracted From:

<https://www.nysersda.ny.gov/All-Programs/Programs/NY-Sun/Contractors/Value-of-Distributed-Energy-Resources>

In support of [Reforming the Energy Vision](#), the New York State Public Service Commission established a mechanism to transition to a new way to compensate distributed energy resources (DER), **like solar power**. This mechanism, called the Value of Distributed Energy Resources (VDER), replaces net energy metering (net metering or NEM).

VDER compensates projects based on when and where they provide electricity to the grid. To determine a project's revenue under VDER, [use the Solar Value Stack Calculator](#). The calculator combines the wholesale price of energy with the distinct elements of DER that benefit the grid: the avoided carbon emissions, the cost savings to customers and utilities, and other savings from avoiding expensive capital investments.

To help explain VDER, we've created this document:

- [VDER and Phase 1 Implementation Order Overview \(10/13/2017\)](#) [PDF]

If you want to dive deeper into the regulation behind VDER and how it applies to solar, download the [VDER Order](#) [PDF] and the [VDER Phase One Implementation Order](#) [PDF].

## Solar Value Stack Calculator

Use our [Solar Value Stack Calculator](#) to estimate compensation for your solar projects.

## VDER on Long Island (New)

The Long Island Power Authority (LIPA) has recently approved a version of VDER for customers of PSEG-Long Island. LIPA's [tariff document](#) has been updated, and contains the details. Please visit [PSEG's VDER website](#) for more details and Long Island-specific resources. The Solar Value Stack Calculator has been revised to include projects in PSEG-Long Island's service territory.

Long Island's VDER Order is largely similar to the rest of the State's VDER program. The most important differences are:

- **Mass market (residential, and non-demand commercial) off-takers of Community Distributed Generation (CDG) projects will receive volumetric crediting rather than monetary crediting through the value stack**
- **Projects receiving ICAP Alternative 3 will have their compensation based on grid injections over the top 10 hours of annual peak utility demand, rather than the single top hour.**

# VDER Frequently Asked Questions

We've compiled answers to some of the most common questions on VDER below, but if you have others, email us at [vder@nyserda.ny.gov](mailto:vder@nyserda.ny.gov).

[FAQs About VDER \(Revised 6.23.2017\)](#) [PDF]

**Attachment B**

**Contract Payment Schedule**

<b>Contract Year</b>	<b>\$/kWh</b>	<b>Expected annual kWh production</b>
1	\$ 0.0000	000,000
2	\$ 0.0000	000,000
3	\$ 0.0000	000,000
4	\$ 0.0000	000,000
5	\$ 0.0000	000,000
6	\$ 0.0000	000,000
7	\$ 0.0000	000,000
8	\$ 0.0000	000,000
9	\$ 0.0000	000,000
10	\$ 0.0000	000,000
11	\$ 0.0000	000,000
12	\$ 0.0000	000,000
13	\$ 0.0000	000,000
14	\$ 0.0000	000,000
15	\$ 0.0000	000,000
16	\$ 0.0000	000,000
17	\$ 0.0000	000,000
18	\$ 0.0000	000,000
19	\$ 0.0000	000,000
20	\$ 0.0000	000,000
21	\$ 0.0000	000,000
22	\$ 0.0000	000,000
23	\$ 0.0000	000,000
24	\$ 0.0000	000,000
25	\$ 0.0000	000,000

**Attachment C**

**Acknowledgment and Confirmation to Lender**

This Acknowledgement and Confirmation to Lender, dated as of \_\_\_\_\_, 201\_\_ (this "Acknowledgement"), is made by \_\_\_\_\_ ("Customer") under that certain Community Solar Subscriber Agreement dated \_\_\_\_\_, 201\_\_ (the "CSSA") with GES Developers LLC, a New York limited liability company ("GES Developers"). This Acknowledgement is provided pursuant to the CSSA to \_\_\_\_\_ ("Lender"), which is providing financial accommodations to GES Developers. The solar photovoltaic system (the "Solar Garden") will be installed, operated and maintained by GES Developers pursuant to the CSSA. The Solar Garden is located at GES Developers' facility at \_\_\_\_\_.

1. Acknowledgement of Collateral Assignment.

- (a) Customer acknowledges the collateral assignment by GES Developers to Lender, of GES Developers's right, title and interest in, to and under the CSSA, as provided in the CSSA.
- (b) Lender, as the assignee of collateral, is entitled to exercise any and all rights of lenders generally with respect to GES Developers' interests in the CSSA, including those rights provided to Lender in the CSSA.
- (c) Customer acknowledges that it has been advised that GES Developers has granted a first priority security interest in the Solar Garden to Lender and that Lender has relied upon the characterization of the Solar Garden as personal property, as agreed in the CSSA in accepting such security interest as collateral for its financial accommodations to GES Developers.
- (d) Until further written notice, Customer agrees to make all payments due GES Developers under the CSSA to Lender, and to provide any notices to Lender at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attention:** \_\_\_\_\_

**Reference:** \_\_\_\_\_

Account Number: \_\_\_\_\_ to the following account:]

2. Confirmation. Customer confirms the following matters for the benefit of Lender:

- (a) To Customer's knowledge, there exists no event or condition that constitutes a default, or that would, with the giving of notice or lapse of time, constitute an event of default, under the CSSA.
- (b) Customer is not aware of any existing lease, mortgage, security interest or other interest in or lien which could attach to the Solar Garden an interest adverse to Lender's security interest therein.

\_\_\_\_\_, **Customer**

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

**Name:**



Sample Customer Bill for Community Distributed Generation

GES Community Solar Developers
324 Pine Brook Road
Bedford, NY 10506

Customer Care: 914-924-0051
customercare@gesdevelopers.com

[Name of Community Solar Project]
Monthly Electricity Invoice

Date: [date]
Invoicing Period: From [start date] – To [end date]

Customer Information:

[Customer Name]
[Customer Account Number]
[Customer local electricity utility]
[Customer local electricity utility Account Number]
[Customer Address]

Billing Information:

The payment amount you owe GES is equal to the kWh of Solar Energy produced and delivered during a production month, multiplied by the price per kWh in effect during the year in which the production month occurs shown on the price list on Attachment B of your contract. You agree to pay the full Monthly Payment within fifteen (15) days after the date of our invoice. The amount of your Monthly Payment assumes payment through automated funds transfer. If we process payments by check, a ten dollar (\$10) handling charge will be added to each invoice.

Table with 5 columns: Your Solar Energy Produced (kWh)\*, Your Unit Price (\$/kWh), Your Total Price (\$), Taxes (\$), Total Payment Due (\$). Rows include State \$0.00, Local \$0.00, and a final row with 0.00, \$0.00, \$0.00, \$0.00, \$0.00.

\*this Solar Energy was credited to your local electric utility bill on 00/00/0000.

Late Payments. If you pay us late, we will charge you interest on the unpaid balance at the rate of three percent (3%) per month, or at any lesser maximum rate permitted by law, until you have fully paid your past due balance.

If paying by check, please remit payments to (made out to GES Developers, LLC):
GES Developers, LLC, 324 Pine Brook Road, Bedford, NY 10506