

Sample Sales Agreement  
and Customer Disclosure  
Statement (Redacted)

## CDG SUBSCRIPTION AGREEMENT

[DATE]

This Community Distributed Generation (“**CDG**”) Subscription Agreement (“**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**”).

<b>Subscriber</b>		<b>Provider</b>	
<b>Name</b>		<b>Name</b>	Annadale Community Clean Energy Projects LLC
<b>Mailing Address</b>		<b>Mailing Address</b>	675 Third Ave, RM 3004 New York, NY 10017
<b>Phone</b>		<b>Phone</b>	(646) 606-2208
<b>Email</b>		<b>Email</b>	roshni@catamaranrenewables.com

This Agreement sets forth the terms and conditions under which Subscriber shall subscribe to an allocation of the Bill Credits generated from one or more Facilities for the Term of this Agreement.

This Agreement is a legally binding agreement with disclosures required by law, so please read carefully. This Agreement is subject to 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 3 to the Accounts.

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

- Exhibit 1** General Terms and Conditions
- Exhibit 2** Definitions
- Exhibit 3** Facilities
- Exhibit 4** Form of Credit Information
- Exhibit 5** Utility Account Information
- Exhibit 6** Utility Account Changes
- Exhibit 7** Standard CDG Disclosures

**Exhibit 1**  
**General Terms and Conditions**

1. **Parties**: This Agreement is entered into as of the date of its execution by both Parties (“**Effective Date**”). Provider shall construct, own, operate, and maintain one or more Facilities (as described in Exhibit 3, as updated by Provider from time to time) in the Utility’s service territory. By signing this Agreement, Subscriber agrees to the terms and conditions below.
2. **Definitions**: Capitalized terms used in this Agreement and its Exhibits shall have the meanings given in Exhibit 2 attached hereto.
3. **Start Date**: The start date is the date on which the Subscriber receives its first Bill Credit on its Utility Bill on account of the Bill Credit information provided to Utility by the Provider (“**Start Date**”). Provider shall provide Subscriber notice of the occurrence of the Start Date within ninety (90) days before the Start Date (the “**Start Date Notice**”).
4. **Initial Term**: The initial term of this Agreement (“**Initial Term**”) shall commence on the Effective Date and expire on the twenty fifth (25<sup>th</sup>) anniversary of the Start Date. For clarity, the Initial Term for Accounts added to this Agreement after the Start Date shall begin on the date of such addition and extend up to the twenty fifth (25<sup>th</sup>) anniversary of the Start Date.
5. **Additional Terms** No less than twelve (12) months prior to the end of the Term, 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 minimum increments of two Years (each such additional period, an “**Additional 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 then current Term on the same terms and conditions as set forth in this Agreement unless agreed otherwise in writing by both Parties. 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 Term.
6. **Utility Accounts and Allocation of Bill Credits**
  - a. **Eligible Subscriber**: In order to qualify as a Subscriber for the purposes of this Agreement, the following criteria (“**Eligibility Criteria**”) are to be met:
    - i. Throughout the Term of this Agreement, Subscriber must be a Utility account holder with a service address in the Utility’s service territory;

- ii. During the Term, in the event Subscriber selects a third-party energy supplier (“ESCO”), such ESCO’s invoices shall be required to be consolidated with Subscriber’s Utility Bill;
  - iii. Subscriber is not currently a net metered customer-generator, a remote net metered host or satellite account, or taking standby service under the Tariff;
  - iv. Subscriber is creditworthy, as determined by Provider in its sole and absolute discretion; and
  - v. Subscriber meets all other requirements to participate in the CDG Program.
- b. **Utility Account Information:** Subscriber shall, (a) on the Effective Date, and (b) within ten (10) days of receiving a Start Date Notice from the Provider; provide (i) a true and complete list of all Utility accounts, held by Subscriber and its Affiliates, (“Accounts”); and (ii) the historic Utility electricity usage and Utility Bill for the last twelve (12) months for existing accounts, or the forecasted Utility electric usage and billing information for Accounts less than one (1) year old (“Utility Account Information”), in the form attached in Exhibit 5 herein. Provider will allocate a portion of the Bill Credits generated from Facility or Facilities for each of the Accounts based on the Utility Account Information.
- c. **Percentage Allocation:** Subscriber’s initial Percentage Allocation for each Account will be determined by Provider, in its sole discretion, based on the Utility Account Information.
- d. **Adjustments to Percentage Allocation:** At any point during the Term, Provider will have the right to adjust the Percentage Allocation allocated to Subscriber: (i) if there is a material change to Subscriber’s Utility Account Information or to Eligibility Criteria, including, but not limited to, change in energy consumption, change in Subscriber’s energy supplier rates, change in Subscriber’s delivery rates, or change to the minimum annual energy threshold for CDG Program subscribers; (ii) the Percentage Allocation of Bill Credits shall not exceed the Subscriber’s historic annual Utility Bill or forecasted annual Utility bill if annual historic data is not available and (iii) in order to maximize the Facility’s allocations to Subscriber and the Facility’s other subscribers as permitted under the CDG Program, the Tariff, and applicable law. Subscriber may request an adjustment in an account’s Percentage Allocation if it expects a material change to its future Utility Bills for any Account. In the event of such adjustment described in this Section 6(d), the Subscriber’s Annual Payment shall be adjusted accordingly in the True-Up.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. **Taxes**

- a. **Federal Tax Matters.** Subscriber and Provider agree that (i) the sale of the Percentage Allocation shall be treated as a service contract pursuant to Internal Revenue Code Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”) and (ii) the transactions contemplated by the Parties’ execution of this Agreement shall not grant Subscriber with any right, title, interest, benefit, burden, or option such that Section 7701(e)(3) of the Code does not apply to Subscriber’s relationship to the Provider and/or Facility.
- b. **State Tax Matters.** Subscriber agrees that it shall be responsible for all sales, use, or other similar taxes imposed upon the purchase and sale of the Percentage Allocation by any Governmental Authority having jurisdiction over Subscriber, the Facility, or the Provider if any, and where such taxes are attributable to the sale of the Percentage Allocation to the Subscriber.

9. **Environmental Attributes and Environmental Incentives**

Unless otherwise specified herein, as between the Provider and Subscriber, but subject to applicable law and regulations, Provider is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Attributes. Subscriber’s purchase of Bill Credits under this Agreement does not include Environmental Attributes, Environmental Incentives, or the right to Tax Attributes or any other attributes of ownership and operation of the Facilities, all of which shall be retained by Provider. Subscriber shall use commercially reasonable efforts to cooperate with Provider in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Attributes, 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 Attributes. If any Environmental Incentives are paid directly to Subscriber, Subscriber shall immediately transfer 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.

10. **Subscriber Default**

- a. The following shall be considered an Event of Default by the Subscriber:
  - i. Subscriber sells, pledges, assigns, or transfers its rights or obligations under this Agreement without obtaining Provider’s prior written consent;
  - ii. Subscriber violates any of its obligations under this Agreement and such violation continues for thirty (30) days after it receives written notice from the Provider of such violation;
  - iii. Subscriber is in breach of its representations and warranties described in Section 14(c) below.

- iv. Subscriber no longer meets the Eligibility Criteria.
  - v. Subscriber provides materially false or misleading information to the Provider in connection with this Agreement;
  - vi. Subscriber voluntarily commences bankruptcy, insolvency, reorganization, stay, or similar debtor-relief proceedings, or if any of the foregoing proceedings are brought involuntarily against Subscriber, or if Subscriber becomes insolvent or generally do not pay debts as they become due, or admit in writing ,Subscriber's inability to pay debts, or make an assignment for the benefit of creditors.
- b. In case of an Event of Default, Provider may take any and all of the following actions and any other action available to it under this Agreement or at law or in equity:
- i. Take action to prevent loss, correct such Event of Default, or otherwise enforce performance of this Agreement, by court action or otherwise;
  - ii. Suspend performance under this Agreement;
  - iii. Terminate this Agreement, provided that Provider will not terminate this Agreement if the default is due to non-payment, the matter is in dispute under and Subscriber is paying all non-disputed amounts.
  - iv. Collect damages from Subscriber equaling the Discount Coupon multiplied by the Actual Annual Bill Credits for the immediately preceding Year (or, if there are not Actual Annual Bill Credits for the immediately preceding Year, the Estimated Annual Bill Credits), provided that, if such Event of Default is cured by Subscriber, such damages shall be pro-rated for any period during which the Event of Default is continuing but not yet cured.

Provider's exercise of any of the remedies listed above does not preclude it from exercising other remedies available to it. If Provider chooses not to exercise a remedy, Provider is 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, Provider reserves the right to pursue any and all other remedies set out in this Agreement and those remedies available at law and in equity.

**11. Termination**

- a. Either Party may terminate this Agreement for convenience, without any penalty or obligation, by providing the other Party email notice of such Termination within three (3) Business Days from the Effective Date.

[REDACTED]



[REDACTED]

12. **Treatment of Bill Credits in Event of Termination**: If Subscriber terminates this Agreement, it may retain all Bill Credits received by it for which Subscriber paid Provider in full and Provider shall retain all payments received by it before such termination is effective.

13. **Subscriber Information**: Subscriber irrevocably authorizes Provider for the duration of the Term, to interact with the Utility, provide Subscriber Information to the Utility, obtain Subscriber Information from the Utility for issues related to the Facilities and Subscriber’s Utility Bill and Bill Credits, and execute any additional documents

reasonably requested by Utility for this purpose. Subscriber shall assist Provider in providing Subscriber Information that may be required by the Utility at any point. Further, Subscriber authorizes or has previously authorized Provider to, now and in the future, answer questions others may ask regarding Subscriber's credit and share Subscriber's credit and financial information with Provider's financing partners, provided that Provider's access and/or disclosure of Subscriber information shall comply with applicable law, including any and all data security requirements. 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 Subscriber from communicating with, instructing or directing the Utility with respect to other matters pertaining to electric service to its Utility service location, its participation in the CDG Program. Subscriber shall also assist Provider in promptly obtaining from the Utility any Subscriber Information, which, for any reason, Provider cannot obtain directly from the Utility in a timely fashion.

14. **Representations, Warranties and Covenants**

- a. **General Representations and Warranties:** Each Party and its Affiliates 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).
- b. **Provider Representations and Warranties:** Provider represents and warrants to Subscriber the following as of the Effective Date:
  - i. Provider has, or in the ordinary course will obtain, all licenses, permits, approvals, and any other required documents to develop, construct, and operate the Facilities;
  - ii. Provider will comply with all provisions of the CDG Program the Tariff, the UBP-DERS, and applicable law in accordance with industry standards.
- c. **Subscriber Representations and Warranties:** Subscriber represents and warrants to Provider the following as of the Effective Date:
  - i. The list of Accounts provided in accordance with Section 6(b) contains a true and complete list of all of its Utility accounts as of the Effective Date.
  - ii. Subscriber is able to pay the Annual Payment via electronic transfer to the Provider.
  - iii. Subscriber currently meets the Eligibility Criteria and, (assuming satisfaction of Section 6(a)(v)) agrees not to take any action during the

Term of this Agreement that would cause Subscriber to no longer meet the Eligibility Criteria.

- iv. Subscriber understands and agrees it is acquiring the Percentage Allocation and Bill Credits for its own account and it will not assign, convey, transfer, resell, or otherwise distribute the Percentage Allocation and Bill Credits to another person or entity, unless mutually agreed upon in writing between the Parties.
- d. **Certain Securities Laws Matters.** Subscriber represents and warrants that:
  - i. Subscriber acknowledges that this contract, and Subscriber's payments made hereunder, entitle Subscriber solely to Bill Credits, and are intended by Subscriber to be used toward Subscriber's consumption of electricity. Subscriber acknowledges that Subscriber's net cost of electricity may or may not be reduced as a result of entering into this contract, depending on, among other factors, the amount of electricity generated by the Systems and fluctuations in utility rates for electricity. Subscriber further acknowledges, however, that Subscriber will not otherwise be entitled to any profit (through earnings, capital appreciation or otherwise) related to the ownership of the Facilities or Provider's income.
  - ii. Subscriber is the sole party in interest agreeing to the terms of this contract and is acquiring Percentage Allocation as a commodity for personal consumption for its own account, not for investment or speculation and not with a view to the resale or other distribution thereof, in whole or in part.
  - iii. Subscriber is aware that this contract has not been registered under the Securities Act of 1933, as amended, and the regulations promulgated thereunder (the "**Securities Act**") or registered or qualified under the securities laws of the state in which Subscriber resides or is located based in part upon the representations of Subscriber contained herein.
  - iv. Subscriber shall not transfer, sell, or otherwise dispose of its interest in this contract or the Percentage Allocation in any manner that shall violate the Securities Act, the rules and regulations of the Securities and Exchange Commission, or the laws and regulations of the State of New York, or any other state or municipality having jurisdiction thereof.
  - v. Subscriber has been given the opportunity to ask questions of, and receive answers from, Provider concerning the terms and conditions of this contract and other matters pertaining to this contract, and has been given the opportunity to obtain such additional information necessary in order for Subscriber to evaluate the merits and risks of the purchase of Percentage Allocation and receipt of associated Bill Credits to the extent Provider possesses such information or can acquire it without unreasonable effort or expense.
  - vi. Subscriber is not relying on Provider or its employees, members of its board of directors (or equivalent body) or officers, or this contract with

respect to tax and other economic considerations involved in whether to enter into this contract.

[REDACTED]

15. **Indemnification**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBSCRIBER AGREES TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS PROVIDER AND ITS SUCCESSORS AND ASSIGNS, AND THEIR EMPLOYEES, PARTNERS, MEMBERS, OFFICERS, DIRECTORS, AND AGENTS, FROM ANY AND ALL DAMAGES, LOSSES, CLAIMS, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OR ANY LIABILITY RESULTING FROM ANY ACTION OR SUIT BY ANY THIRD PARTY, OF ANY KIND RESULTING FROM THE SUBSCRIBER'S FAILURE TO COMPLY WITH ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT.

16. **Limitation of Liability**

NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT, UNDER STATUTE, OR IN EQUITY, AND EACH PARTY HEREBY WAIVES ITS RIGHTS TO ANY SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PROVIDER'S LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT MAY NOT EXCEED SUBSCRIBER'S ANNUAL PAYMENT FOR ONE YEAR.

17. **Force Majeure**

- a. 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 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.

- b. 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.
- c. 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, either Party shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

#### 18. **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 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 Provider'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), and (vi) assign this Agreement and the Facility or Facilities to any assignee that (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. In the event of any such assignment (other than a collateral 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. 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 Party**" 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 any financing or any assignment pursuant to Section 18.a(iv)-(i), Subscriber agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

**19. 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, advisors, contractors and consultants (collectively, "Representatives"), and Affiliates, actual or potential lenders, and potential assignees of this Agreement or equity in the Provider (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 19.a, except as set forth in Section 19.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 Section 19.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 19.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 19.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.
20. **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.
21. **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**: The Parties agree that any dispute, claim or disagreement arising out of this Agreement (a “**Dispute**”) shall be resolved exclusively by arbitration. The arbitration, including the selecting of the arbitrator, will be administered by JAMS Inc. (“**JAMS**”), under its Streamlined Arbitration Rules (the “**Rules**”) by a single neutral arbitrator agreed on by the parties within thirty (30) days of the commencement of the arbitration. The arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either Party may initiate the arbitration process by filing the necessary forms with JAMS. To learn more about arbitration, you can call any JAMS office or review the materials at [www.jamsadr.com](http://www.jamsadr.com). The arbitration shall be held in San Francisco, California. The party bringing the claim can choose to proceed by way of binding arbitration pursuant to JAMS’ rules or, alternatively, can bring an individual action in small claims court.

- i. Only Disputes involving the parties may be addressed in the arbitration. Disputes must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. The arbitrator will not award relief for or against anyone who is not a party. If either party arbitrates a Dispute, neither party, nor any other person, may pursue the Dispute in arbitration as a class action, class arbitration, private attorney general action or other representative action, nor may any such Dispute be pursued on either party's behalf in any litigation in any court. Claims regarding any Dispute and remedies sought as part of a class action, class arbitration, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. This means that the arbitration may not address disputes involving other persons with disputes similar to the Disputes between the parties.
- ii. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant under this agreement. The arbitrator, however, is not authorized to change or alter the terms of this agreement or to make any award that would extend to any transaction other than the transaction between the parties under this contract. All statutes of limitations that are applicable to any dispute shall apply to any arbitration between the parties. The arbitrator will issue a decision or award in writing, briefly stating the essential findings of fact and conclusions of law.
- iii. **BECAUSE THE PARTIES HAVE AGREED TO ARBITRATE ALL DISPUTES, NEITHER PARTY 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 RULES AND AS PROVIDED EXPRESSLY HEREBY. FURTHER, NEITHER PARTY SHALL HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS PERTAINING TO ANY DISPUTE. THE ARBITRATOR'S DECISION WILL BE FINAL AND BIND-ING ON THE PARTIES AND MAY BE ENTERED AND ENFORCED IN ANY COURT HAVING JURISDICTION, EXCEPT TO THE EXTENT IT IS SUBJECT TO REVIEW IN ACCORDANCE WITH APPLICABLE LAW GOVERNING ARBITRATION AWARDS. OTHER RIGHTS THAT THE PARTIES WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.**
- iv. Notwithstanding the foregoing, any Disputes involving Mass Market Accounts may also be resolved prior to arbitration through Provider's complaint resolution procedures, by calling [ ] or in writing via electronic mail to [ ]. Provider will provide an acknowledgement or response to a



Subscriber inquiry involving a Mass Market Account within two (2) days and, if only an acknowledgement is provided, a response within fourteen (14) days.

- v. 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 Subscriber has inquiries or complaints that the Provider is unable to resolve, Subscriber has the right to call the Department of Public Service Helpline at 1-800-342-3377. Subscriber may file a complaint on the Helpline or by following the instructions at <http://www.dps.ny.gov/complaints.html>.
- c. **HEFPA:** The Parties acknowledge that this Agreement and General Terms and Conditions are in accordance with (i) the Home Energy Fair Practices Act (“HEFPA”) for residential Accounts and (ii) the UPB-DERS; and that the Subscriber is notified of its rights under HEFPA (for Service Classification 1 Accounts) and UPB-DERS. More information about HEFPA protections applicable to this Agreement are available online at <http://www.dps.ny.gov>. An annual notification of Subscriber’s rights under HEFPA will also be provided to Subscriber’s residential Account directly by the Utility. If subsequent changes in applicable law require Provider to provide additional information about Subscriber’s HEFPA rights, Provider shall provide Subscriber with such additional information within a reasonable time and in accordance with the provisions of HEFPA Section 18(a)(i).
- 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 14 (Representations and Warranties), Section 15 (Indemnification and Limits of Liability), Section 19 (Confidentiality and Publicity), Section 21.a (Choice of Law), Section 21.b (Arbitration and Attorneys’ Fees), Section 21.d (Notices), Section 21.i (Comparative Negligence), Section 21.j (Dedication of Facilities), Section 21.l (Service Contract), Section 21.m (No Partnership), Section 21.n (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. **Regulatory Savings:** Provider and Subscriber shall reasonably cooperate to ensure compliance of this Agreement and the Facilities with the CDG Program the Tariff, and applicable law, including by executing such acknowledgements and instruments as the other party may reasonably request in furtherance of the foregoing, and amending this Agreement to avoid any non-compliance, provided that any such amendments shall preserve the fundamental economic benefits and burdens of the transactions contemplated by this Agreement.
- h. **Right of Waiver:** 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.
- i. **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.
- j. **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.

- k. **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, breaches 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 contrary actual knowledge of facts contained in the certificate.
- l. **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.
- m. **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.
- n. **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:**

**Provider:**

**ANNADALE COMMUNITY CLEAN  
ENERGY PROJECTS LLC**

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

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

**Date:**

**Date:**

**Email:**

**Phone:**

**Address:**

SAMPLE

**Exhibit 2**  
**Definitions**

“Accounts” is defined in Section 6(b)

[REDACTED]

“Actual Payment Calculation” is defined in Section 7(h).

“Additional Term” is defined in Section 5.

“Affiliate” means, with respect to a specified Party, an entity that directly or indirectly through one or more intermediaries, is controlled by such Party.

[REDACTED]

“Availability” means both the physical availability of a Facility as well as legal availability under the Tariff.

“Bill Credit” means the credits applied to offset the Subscriber’s Utility Bill for each of the Accounts. Bill Credits shall be calculated by multiplying the Percentage Allocation for such Account and the VDER Value Stack Tariff.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“CDG” is defined in the recitals to the Agreement.

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

“Change in Law” means the enactment of any new law, or the occurrence of any revisions in, implementation of, amendments to, or interpretations of any law or utility tariffs, or any action or inaction by Utility or by a Governmental Authority that could materially affect the economic outcome or financial model to either Party under this Agreement.

“Commission” means the New York Public Service Commission.

[REDACTED]

“Effective Date” is defined in the recitals to the Agreement.

“Eligibility Criteria” is defined in Section 6(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 (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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 Attributes. 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.

“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.

[REDACTED]

“Event of Default” is defined in Section 10(a).

“Facility” or “Facilities” means the energy facilities described in Exhibit 3 to this Agreement, as may be updated from time to time by Provider.

“Financing Party” is defined in Section 18(b).

“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 or Bill Credits 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 or unavailability of Bill Credits from the Facilities or Utility (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.

“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.

“Initial Term” is defined in Section 4.

[REDACTED]

[REDACTED]

[REDACTED]

“Percentage Allocation” means the percentage of the Facilities’ Bill Credits that are allocated to the Subscriber’s Accounts as per this Agreement.

“Service Classification” means the Utility service classification for any given Account.

[REDACTED]

“Start Date” is defined in Section 3.

“Start Date Notice” means the notice provided to the Subscriber by the Provider thirty (30) days before the Start Date.

“Subscriber Information” means, for the Accounts, the Utility Account Information, and electricity consumption information.

“Substitute Accounts” is defined in Section 11(c)

“Substitute Subscriber” is defined in Section 11(c)

“Tariff” means the Utility’ Schedule for Electricity, PSC No. 10.

“Tax Attribute” means any and all (a) investment Tax Attributes, (b) production Tax Attributes, (c) similar Tax Attributes or grants under federal, state or local law relating to the construction, ownership or production of energy from the Facility or Facilities, (d) any grants or payments in lieu of the foregoing, (e) any other tax deductions or benefits under federal, state or local law relating to the construction, ownership or production of energy from the Facility or Facilities (including, without limitation, any accelerated and/or bonus depreciation).

“Term” means the Initial Term and any Additional Term, as applicable.

“True-Up” is defined in Section 7(i).

“UBP-DERS” is defined in the recitals to this Agreement

“Update Report” means the annual report provided to Subscriber by the Provider containing current information on the Accounts under this Agreement, the Percentage Allocation, Utility Bill information and Bill Credits.

“Utility” means Consolidated Edison Company of New York, Inc.

“Utility Account Change Form” means the form attached as Exhibit 6 to this Agreement.

“Utility Account Information” is defined in Section 6(b) and shall be provided in the form attached as Exhibit 5 to this Agreement.

“Utility Bill” means the invoice provided every billing period (usually a month), by the Utility to the Subscriber for each of its Accounts. For the avoidance of doubt, the Utility Bill includes all customer service charges, delivery charges, commodity and/or supply charges, and sales tax charges.

“VDER Value Stack Tariff” means the formula used to determine the Bill Credits as determined by the Utility, from time to time, under the Tariff, as it may be modified from time to time by the Commission.

“Year” means a period of one year beginning on the Start Date and ending 12 calendar months after the Start Date.



**Exhibit 3**

**Facilities**

Facility Name	Facility Address	Anticipated Start Date	Generation Technology	Capacity (kW)	Utility

SAMPLE

**Exhibit 5**

**Utility Account Information**

<b>Utility Account Number (15 digits)</b>	<b>Utility Account Name (Account Holder)</b>	<b>Service Address</b>	<b>Account Type (Mass Market or Non-Mass Market)</b>	<b>Estimated Annual Utility Bill</b>	<b>Annual Electricity Usage (kWh)</b>	<b>ESCO Supplier (consolidated billing)</b>	<b>ESCO Supplier Rate (\$/kWh)</b>

**Exhibit 7**

**Standard CDG Disclosures**

Project: Annadale Community Clean Energy Projects LLC

Address: 675 Third Ave., RM 3004, New York, NY 10017

Telephone: (646) 606-2208 Email: [roshni@catamaranrenewables.com](mailto:roshni@catamaranrenewables.com)

<b>COMMUNITY DISTRIBUTED GENERATION DISCLOSURE FORM</b>	
<b>Customer Information</b>	Name: [ ] Service Address(es): Listed in Exhibit 5 Mailing Address: [ ] Telephone: [ ] Email: [ ]
<b>Distribution Utility</b>	Consolidated Edison Company of New York, Inc. (ConEdison)
<b>Overview</b>	This document describes your Community Distributed Generation (CDG) fuel cell subscription agreement. In the event that the terms in this statement conflict with terms appearing elsewhere in your contract, the terms in this statement are controlling. Read this document and the contract carefully so that you understand this agreement.
<b>Price, Fees, and Charges</b>	[REDACTED]

	<p>[REDACTED]</p>
<p><b>Project Location(s) and Customer Allocation(s)</b></p>	<p>Facility Addresses, capacities, and Anticipated Start Dates listed in Exhibit 3.</p> <p>The initial Percentage Allocation for each Account will be determined by Provider, after Provider receives Utility Account Information, in accordance with Section 6(c) of Exhibit 1. Percentage Allocations may be updated from time to time in accordance with the terms of this Agreement.</p>
<p><b>Length of Agreement and Renewal</b></p>	<p>[REDACTED]</p>
<p><b>Early Termination</b></p>	<p>[REDACTED]</p>
<p><b>Estimated Benefits</b></p>	<p>[REDACTED]</p>
<p><b>Guarantees</b></p>	<p>Provider does not guarantee the amount of generation by the Facilities, the amount of Bill Credits that Subscriber will receive from Utility, or the value of such Bill Credits which will be determined based on the VDER Value Stack Tariff and Commission rules and regulations.</p>
<p><b>Data Sharing and Privacy Policy</b></p>	<p>Subscriber agrees to authorize Provider to request data from Utility regarding Subscriber’s Accounts, electricity usage, and Utility Bills and execute any additional documents reasonably requested by Utility for this purpose.</p>



	<p>[REDACTED]</p>
<b>Preparer Name and Contact Information</b>	[NAME OF SALES REPRESENTATIVE] Annadale Community Clean Energy Projects LLC c/o Catamaran Renewables 675 Third Ave., RM 3004 New York, NY 10017

Signature of Authorized Company Official or Representative:      Date:

Signature of Customer:      Date:

