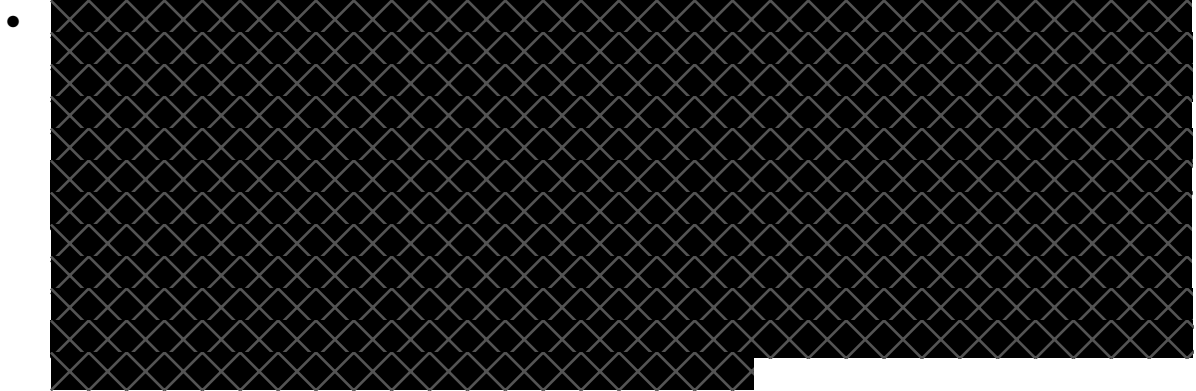


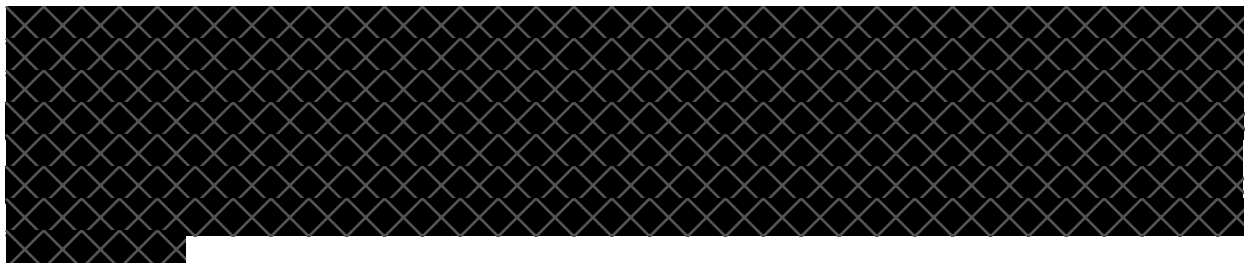
**COMMUNITY DISTRIBUTED ENERGY RESOURCE FACILITY  
CREDIT SALE AND PURCHASE AGREEMENT**

**ABSTRACT**

- **You are receiving this agreement because of your interest in Community Distributed Generation (“CDG”).** You are being offered the opportunity to subscribe to an existing or soon to be constructed distributed energy resource facility (each “DER Facility”). The DER Facilities are part of the New York Public Service Commission’s CDG Program. The CDG program allows customers of the same utility to receive dollar credits on their energy bill, known Community Distributed Generation Credits (“Bill Credits”). These credits are associated with electricity produced or stored by this DER Facility, but they are not Renewable Energy Certificates (“RECs”).
- **You are not purchasing energy from the DER Facility.** You are entering into an agreement to purchase Bill Credits, from the owner of the DER Facility (“DER Producer”). You will remain a customer of your local distribution utility (“Utility”) and will be responsible for any outstanding charges on your Utility invoice not offset by Bill Credits. DER Producer is not a Competitive Energy Supply Company (“ESCo”) and this is not an Energy Supply contract.
- **The amount of Bill Credits you receive will vary month to month. DER Producer** will subscribe you to a percentage of the DER Facility’s generation and/or storage capacity, and will instruct Utility to assign Bill Credits associated with that generation and/or storage to your account. This may result in an offset of up to 100% of your Utility invoice every month. This offset level will change slightly from month to month due to factors including, but not limited to fluctuations in sunlight.



**By signing this agreement, you agree to be legally bound to the following terms and conditions:**



1. Allocation of Community Distributed Energy Resource Facility Credits.
  - a. Subject to Section 4(b) of this agreement, for each Billing Period during the term of this

agreement, DER Producer shall allocate, sell, assign, and facilitate delivery of Bill Credits associated with Subscriber's allocation of a DER Facility's production and/or storage capacity. DER Producer will initially assign Subscriber to an eligible DER Facility based on available capacity, and will notify Subscriber by email upon such assignment to an eligible DER Facility. Subscriber's initial allocation will be set not to exceed one hundred percent (100%) of Subscriber's actual historical annual energy consumption, or an estimate of annual consumption if actual data is not available. DER Producer will provide Subscriber with notice of its allocation after DER Producer has reviewed Subscriber's energy consumption data. DER Producer makes no representations concerning the exact amount of Bill Credits associated with that allocation which will be available during any billing period. DER Producer also makes no representations concerning the value of the Bill Credits provided to Subscriber, which is calculated by Utility.

- b. DER Producer shall have the right to make adjustments to Subscriber's allocation hereunder in future Billing Periods with or without notice to subscriber.
- c. Subscriber authorizes DER Producer and its third-party subcontractor Arcadia ("Service Provider"), which will provide on-line billing, payment, and allocation management services under this agreement, to obtain and review the following information from the Utility: Consumption history and billing determinants. This information will not be disclosed to any other third party except Service Provider unless required by law. Service Provider is obligated to maintain confidentiality of such information and disclosure is limited to the extent reasonably necessary for administration of this agreement, notwithstanding Section 7 of this agreement. Subscriber further authorizes DER Producer to share such information to any of its successors or assigns pursuant to Section 7, and/or any third-party contractor succeeding Service Provider, as necessary to effectuate the terms of this agreement and otherwise allowed by applicable law. This authorization will be effective from the signature date of this contract until the Initial Term and any Renewal Terms have elapsed. Subscriber may rescind this authorization at any time by terminating the agreement pursuant to Section 5, below.

## 2. Payment for Community Distributed Generation Credits

- a. The initial Billing Service Provider for this Agreement is Arcadia, whose terms of service are available at [legal.arcadia.com](http://legal.arcadia.com). DER Producer may change the Billing Service Provider at any time by notifying you in writing. For each Billing Period (e.g., monthly) until the end of this agreement, DER Producer shall provide to Subscriber an invoice via email, and shall be entitled to process and collect on invoices per the Billing Service Provider's terms of service.
- b. The above subsections notwithstanding, DER Producer reserves the right, in its sole discretion, to implement consolidated billing in the future pursuant to the New York State Public Service Commission's ("NY PSC") December 12, 2019 Order in Case 19-M-0463, including any future amendments or changes thereto.

## 3. Mutual Cooperation/Dispute Resolution

- a. If Subscriber, in good faith, disputes an amount paid to DER Producer as provided in this agreement, Subscriber shall notify DER Producer within six (6) calendar months from the date of such payment. The Parties agree to seek resolution in good faith. Upon resolution of the dispute, any required disbursements or payments shall be made to Subscriber or DER Producer, where appropriate, with clear communication regarding the method and timing of these disbursements or payments.
- b. If Subscriber, in good faith, wishes to file any other complaint or dispute with DER Producer, Subscriber shall do so via written notice or electronic mail as soon as possible, at the contact information provided in Section 13, below. Subscriber may also file a complaint at any time with

the New York State Department of Public Service ("NY DPS") using the contact information listed in Section 10 of this agreement.

- c. Subscriber may, at any point during a dispute or complaint resolution process, request a written report from DER Producer detailing all attempts to resolve the complaint or dispute.
- d. If the Parties cannot come to a resolution through the processes outlined in the foregoing, the sole remedy for either Party shall be to file a complaint at any time with the New York State Department of Public Service ("NY DPS") using the contact information listed in Section 10 of this agreement.

4. Subscriber's Acknowledgements.

- a. Subscriber understands that the DER Facility will deliver electricity and/or provide electric storage to the Utility and not to Subscriber. The Utility will make all calculations and determinations regarding the amount of the Bill Credit to be applied to Subscriber's electric account, which calculations shall be made pursuant to applicable law and regulations. Subscriber further understands that it has no ownership or other interest in the electricity generated and/or storage provided by the DER Facility, and that this agreement is only for the sale by DER Facility and the purchase by Subscriber of Bill Credits.
- b. Subscriber understands that as of the Effective Date, Subscriber may not yet have been assigned to a DER Facility by DER Producer, and/or the DER Facility may not yet be constructed and operating. Subscriber further understands that it will not receive any Bill Credits until it has been assigned to a DER Facility by DER Producer, the DER Facility has been fully constructed, achieves commercial operation and begins generating electricity and/or providing storage, and the Utility has begun to process Bill Credits associated with DER Facility generation and/or storage.
- c. Subscriber understands that Subscriber has no ownership interest in any DER Facility, or any part thereof; nor can Subscriber claim any environmental, tax or other credits (whether renewable energy, carbon offset, or other), rebates or other subsidies or benefits available to renewable energy sources generally other than the Bill Credits.
- d. Pursuant to the NY PSC's Orders governing the CDG Program, DER Producer is required to provide Subscriber with the CDG Participant Customer Disclosure Form (the "Disclosure Form") that has been provided to Subscriber together with this agreement. Subscriber acknowledges and agrees that Subscriber will receive, complete and execute the Disclosure Form, and that this agreement shall not be effective, and Subscriber shall not be eligible to receive Bill Credits, until Subscriber has returned such completed and executed Disclosure Form to Subscriber, in addition to this executed agreement.
- e. SUBSCRIBER UNDERSTANDS THAT UNDER THIS AGREEMENT, DER PRODUCER CANNOT GUARANTEE WHETHER THE VALUE OF BILL CREDITS PROVIDED BY THE UTILITY WILL INCREASE OR DECREASE AND, IF IT DOES, BY HOW MUCH. DER PRODUCER ALSO DOES NOT GUARANTEE ANY MINIMUM DER FACILITY PRODUCTION, STORAGE OR BILL CREDIT AMOUNTS TO SUBSCRIBER.
- f. Subscriber understands that this agreement is a purchase contract and not a security registered under federal or state law. Subscriber is entering into this agreement solely to receive Bill Credits as an energy-related commodity for use at the Utility account identified by it, not for investment or speculation, not with a profit expectation, and not with a view to the resale of any benefits under this agreement. Subscriber does not have an interest in the profits or losses of the DER Facility and will not otherwise be entitled to any profit related to the DER Facility or by

entering into this agreement.

5. Term and Termination of Agreement.

- a. This agreement shall continue indefinitely until terminated in accordance with the provisions of this Section 5.
- b. Notwithstanding anything to the contrary contained herein, Subscriber may terminate this agreement by giving DER Producer written notice ninety (90) days before the desired termination date. In the event Subscriber provides notice of termination, DER Producer will coordinate with your Utility so that you stop receiving Bill Credits as soon as practicable. There is no fee for early termination of this agreement.
- c. Notwithstanding anything to the contrary contained herein, DER Producer may terminate this agreement at any time by giving Subscriber written notice that it will no longer allocate Bill Credits to Subscriber. Such notice will specify the date as of which Bill Credits will no longer be allocated, and such date shall serve as the effective date of termination of this agreement.
- d. Upon termination, Sections 3, 9, 10, 11 and 12 shall survive, regardless of the reasons for such termination.
- e. In addition, notwithstanding the foregoing or any other provision set forth herein, Subscriber may cancel this agreement without charge or penalty within three (3) business days of signing pursuant to Section 10, below.

6. Events of Default.

- a. The following shall constitute an Event of Default hereunder:
  - i. The failure of Subscriber to pay any undisputed sum within 10 days of the date due, as defined on the invoice, is considered to be an event of default. Subscriber shall not be in default on such occasions if the amount due is received by DER Producer within five (5) days after Subscriber's receipt of DER Producer's notice of default.
- b. Immediately upon an Event of Default of Subscriber, DER Producer may, in its sole discretion, terminate this agreement by giving Subscriber written notice thereof and allocate and/or assign to a third party the electricity allocated to Subscriber by the terms of this agreement.

7. Assignment.

- a. Subscriber may not assign this agreement. Subscriber may, however, change the address for the electric account to which the Bill Credits are applied so long as (i) Subscriber provides written notice to DER Producer and (ii) the new address is serviced by the same Utility that provided service to the old address. The change in address will be effective upon the Utility allowing DER Producer to make such change, which generally occurs within 30 days. DER Producer will not be liable for any Bill Credits lost as a result of such change of address.
- b. DER Producer may assign, sell or transfer the DER Facility and this agreement, or any part of this agreement or the exhibits, and DER Producer may subcontract any obligations under this agreement, without Subscriber's consent. In the event any such assignment extends to all of DER Producer's obligations under this agreement, DER Producer will be released from all DER Producer's liabilities and other obligations under this agreement. Assignment, sale or transfer generally means that DER Producer would transfer certain of DER Producer's rights and

obligations under this agreement to another party. If requested by DER Producer, Subscriber agrees to execute and deliver to any such transferee, assignee or financing partner an acknowledgment and confirmation of your obligations under this agreement as may be reasonably requested by DER Producer.

8. Force Majeure. If DER Producer is unable to perform all or some of its obligations hereunder because of a Force Majeure Event, DER Producer will be excused from whatever performance is affected by the Force Majeure Event, provided that:
  - a. DER Producer's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event (e.g., when a Force Majeure Event is over, DER Producer will make repairs); and
  - b. No DER Producer or Subscriber obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event;
  - c. The DER Producer provides notice to Subscriber of the Force Majeure Event within a reasonable period of time after the occurrence thereof describing the particulars of the occurrence and the anticipated period of delay; and
  - d. For purposes of this agreement, the term "Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by DER Producer's fault or negligence. Force Majeure Events shall include, without limitation, any failure to produce, deliver or receive the electricity generated by the DER Facility caused by: flood, fire, lightning, earthquake, tornado, hurricane, other "Acts of God", war, riot, terrorism, insurrection, sabotage, work stoppage, strike or slow-down, any failure of the electrical grid, any failure of equipment not utilized by DER Producer or under DER Producer's control, or any failure of the DER Facility to produce electricity not caused by DER Producer's fault or negligence.
9. HEFPA Rights. Subscriber is entitled to protections pursuant to the Home Energy Fair Practices Act, Part 11 of Chapter 16 of the Rules and Regulations of the State of New York ("HEFPA"), which covers but is not limited to third party notification rights; a prohibition against security deposits in certain circumstances; limitations on estimated billing; limitations on back billing; and limitations on late charges. More information about Subscriber's HEFPA protections are available online at <http://www.dps.ny.gov>. An annual notification of Subscriber's rights under HEFPA will also be provided to Subscriber directly by the Utility. If subsequent changes in applicable law require DER Producer to provide additional information about Customer's HEFPA rights, DER Producer shall provide Customer with such additional information within a reasonable time and in accordance with the provisions of HEFPA Section 18(a)(i).
10. UBP-DERS Rights. Subscriber is entitled to protections pursuant to the Uniform Business Practices for Distributed Energy Resource Suppliers, including, but not limited to, the right to cancel this agreement without penalty within three (3) business days of the original effective date without charge or penalty; the right to information regarding Subscriber's mechanisms for handling billing questions, disputes, and complaints; and contact information for the New York State Department of Public Service in the event of a dispute or complaint with DER Producer. Contact information for the New York State Department of Public Service is as follows:

Office of Consumer Services  
NYS Department of Public Service 3 Empire State Plaza  
Albany, NY 12223  
Ph.: 1-800-342-3377  
Hours of operation of the NY DPS as of the date of this agreement: 8:30 a.m. - 4:00 p.m.



[\_\_\_\_\_]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SUBSCRIBER:**

Signature: /s/ Subscriber as named in the Contract Acceptance

Date: as specified in the Contract Acceptance

[REDACTED]

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## Community Distributed Generation Credit Sale and Purchase Agreement

Version

### Contract Acceptance

Signer

Contract ID

Email

Date

IP Address

User Agent