

# Community Distributed Generation Disclosure Form

## OVERVIEW

---

This Disclosure Form describes your community solar subscription. In the event that the terms in this statement conflict with terms appearing elsewhere in your contract, the terms in this Disclosure Form are controlling. Read this document and the contract carefully so that you fully understand this agreement.

## PRICE, FEES, AND CHARGES

---

Each month, you will receive credits on your electric utility bill based on the electricity generated by the project. Your subscription fee will be automatically taken from the credits you receive on your utility bill. Your subscription fee is equal to 90% of the value of the credits you receive each month. After the credits are reduced by the subscription fee, you will receive savings equal to 10% of the credits you receive. You will not be charged any other fees.

## BILL CREDITS

---

The credits applied to offset the kWh charges on Subscriber's Electric Utility bill.

## PROJECT LOCATION AND CUSTOMER ALLOCATION

---

The clean energy project will be located in your utility's coverage area in New York State. Your allocation of the project's generation will be based on 90% of your electricity usage over the previous twelve months.

We will send notification by e-mail when your account has been successfully connected to a project, and provide you with additional details including project location and size.

## LENGTH OF AGREEMENT AND RENEWAL

---

For Zip Codes outside of 12037, 12060, 12132, and 12136:

Term: 25 years.

Renewal Options: The Agreement may be renewed for up to two (2) additional five (5) year periods.

For Zip Codes in 12037, 12060, 12132, and 12136:

The term of this subscription agreement is one (1) year from the initial project operation date or the date of execution of this contract, whichever is later. The contract automatically renews on the anniversary date for one (1) year, with automatic renewals until the 25th anniversary.

## EARLY TERMINATION

---

Subscriber may terminate this Agreement upon giving Provider written notice at least ninety (90) days before the desired termination date ("Termination Date"). Following Subscriber's notice of termination, Subscriber will continue to be allocated Bill Credits until the earlier of (a) the Provider replacing the Subscriber with a new subscriber satisfactory to the Provider, in its sole discretion, at approximately the same Percentage Allocation which new subscriber and allocation has been approved by the Utility, and (b) the Termination Date. Termination pursuant to the above is not subject to a termination fee.

## ESTIMATED BENEFITS

---

Estimate of kWh generation received annually: Up to 90% of your current annual consumption. You should expect to save up to 10% on your monthly utility bill, depending on the amount of Bill Credits that are applied.

## GUARANTEES

---

This contract does not guarantee a specific dollar amount of savings and does not guarantee a minimum level of system performance or production of energy. Actual savings will be based on actual system production, which will vary, and the Value of Bill Credits, which may change from time to time.

## **DATA SHARING AND PRIVACY POLICY**

---

Requests to your Utility regarding your account and kwh usage may be made monthly for the purpose of comparing savings and ensuring accuracy. CDG Host agrees to protect Subscriber's Data and except as may be required by this Agreement, applicable law, court order, or with Subscriber's consent, CDG Host will not publicly disclose Subscriber's Data, energy usage data, or billing information, unless such disclosures are made to CDG Host's financiers, lawyers, accountants, and agents of CDG Host and only to the extent reasonably necessary.

## **CUSTOMER RIGHTS**

---

If you have inquiries or complaints that the CDG Host 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>.

## **OTHER IMPORTANT TERMS**

---

The services provided under this subscription agreement comply with the Home Energy Fair Practices Act (HEFPA) and the UBP-DERS, which provides residential customers with rights and protections. For information regarding HEFPA, reference 16 N.Y. Codes, Rules, Regs. 11.1 through 11.22.

## **RIGHT TO CANCEL WITHOUT PENALTY**

---

YOU, THE SUBSCRIBER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION BY NOTIFYING CDG HOST AT [INFO@ASTRALPOWER.COM](mailto:INFO@ASTRALPOWER.COM). INCLUDE YOUR UTILITY ACCOUNT NUMBER AND NAME IN AN E-MAIL WITH THE SUBJECT LINE. "EARLY TERMINATION".

## **CDG PROJECT MANAGER**

---

The CDG Provider has designated Astral Power Inc as its CDG Project Manager. Any notices and communications shall be directed to: Astral Power Inc I 244 Fifth Avenue, Suite 1237, New York, NY 10001 - [info@astralpower.com](mailto:info@astralpower.com) - (866) 922-7335

## General Terms and Conditions

1. **PARTIES.** This Solar Community Distributed Generation Subscription Agreement for Residential Subscribers (“Agreement”) is entered into as of the “Effective Date” by and between Delaware River Solar, LLC (together with its successors, assigns, designees, and agents, the “CDG Host”) and you, the “Subscriber” (individually, a “Party” and collectively, the “Parties”). CDG Host shall construct, own, operate, and maintain a Solar NMGF (as defined below) in the Electric Utility’s service territory and the same NYISO Zone as Subscriber’s Service Address. The New York State Public Service Commission permits the Subscriber to receive Bill Credits on their Electric Utility bill calculated in connection with the Percentage Allocation of the Excess Generation of such Solar NMGF. 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 A attached hereto.
3. **TERM.** For Zip Codes outside of 12037, 12060, 12132, 12136:  
The Term of this Agreement shall commence on the Effective Date and shall expire on the twenty-fifth (25 th) anniversary of the date on which Provider first invoices Subscriber for a Subscription Payment in accordance with Section 4 (“Term”). Unless Subscriber contacts Provider at least sixty (60) days prior to the expiration of the Term requesting in writing that the Term not be renewed, the Term shall be renewed for an additional five (5) years. The Term may be renewed a maximum of two (2) times.  
For Zip Codes within 12037, 12060, 12132, 12136:  
The Agreement shall commence on the Effective Date and shall expire on the first (1st) anniversary of the later of the Commercial Operation Date or the Effective Date (the “Initial Term”) unless otherwise renewed. After the Initial Term, the term of this Agreement shall automatically renew for successive one (1) year terms (each, a “Renewal Term”) until the earlier of (i) the termination of this Agreement pursuant to Sections 8 or 10 hereof or (ii) the twenty-fifth (25th) anniversary of the Commercial Operation Date. The term of this Agreement (the “Term”) shall include the Initial Term plus any and all Renewal Terms.
4. **PURCHASE OF ALLOCATION; ELIGIBILITY.**
  - a. **Bill Credits.** CDG Host agrees to sell to Subscriber and Subscriber agrees to purchase from CDG Host Bill Credits for the entire Term. Bill Credits shall be applied to Subscriber’s Electric Utility bill no more than once per calendar month. If the amount of Bill Credits exceeds the amount of usage on Subscriber’s Electric Utility bill in the applicable Bill Period, the excess Bill Credit(s) shall be applied to Subscriber’s subsequent Electric Utility bill. In the event any such excess Bill Credits remains unapplied on the Subscriber’s account, it is intended under operation of the CDG Program that such excess Bill Credits shall remain on such account until applied by the Electric Utility against amounts due by Subscriber under its Electric Utility Bill. Subscriber understands and agrees that it shall pay the Monthly Subscription Payment to the CDG Host regardless of whether the Bill Credit is applied in whole or in part and carried over to subsequent Bill Periods.
  - b. **Energy Attributes.** Subscriber’s purchase of the Percentage Allocation will not include the right to any Energy Attribute.
  - c. **Subscriber Eligibility.** Subscriber’s eligibility to purchase the Percentage Allocation and receive Bill Credits is expressly conditioned upon Subscriber meeting the following criteria and any other criteria outlined by applicable law (the “Subscriber Eligibility Criteria”): (i) Subscriber is an Electric Utility account holder with a Service Address in the Electric Utility’s service territory (with the Subscriber being the named or one of the named account holders); (ii) the Service Address is located within the same NYISO Zone as the Project NMGF; (iii) the Percentage Allocation of the Excess Generation shall amount to at least one thousand (1,000) kWhs annually; (iv) the Percentage Allocation of the Excess Generation shall not exceed the Subscriber’s historic annual kWh usage or forecasted usage if annual historic data is not available; (v) Subscriber is not currently a net metered customer-generator, a remote net metered host or satellite account, or is taking Standby Service under the Tariff; and (vi) Subscriber is creditworthy, as determined by CDG Host in its sole and absolute discretion, at the time this Agreement is executed.
  - d. **Subscriber Authorization.** Subscriber authorizes or has previously authorized CDG Host or

Electric Utility to obtain Subscriber's historical kWh consumption data. Subscriber authorizes or has previously authorized CDG Host to obtain Subscriber's credit report now and in the future, answer questions others may ask regarding Subscriber's credit and share Subscriber's credit information with CDG Host's financing partners. Subscriber hereby certifies that all information Subscriber provided to CDG Host in connection with CDG Host obtaining Subscriber's historical kWh consumption data and credit history will be true and Subscriber understands that this information shall be updated upon request if Subscriber's conditions change. Should Subscriber be found to be in violation of the Subscriber Eligibility Criteria, this Agreement may be subject to termination by CDG Host, the Electric Utility, or a governmental authority having jurisdiction over the CDG Program.

- e. Subscriber Data. To ensure Subscriber receives the appropriate Bill Credits, Subscriber shall permit CDG Host to provide the Electric Utility with the following information: the Percentage Allocation, Subscriber's name, Subscriber's account number, Subscriber's mailing address, and the Service Address (collectively "Subscriber's Data").

## 5. SUBSCRIPTION PAYMENT.

- a. Monthly Subscription Payment. For the right to receive the Percentage Allocation and the corresponding Bill Credits applied to Subscriber's Electric Utility bill for a given Bill Period, Subscriber shall pay to CDG Host the "Monthly Subscription Payment" each Bill Period for the Term and each Renewal Term. The Monthly Subscription Payment is described on the Cover Page of this Agreement.
- b. Invoicing. Commencing no more than fifteen (15) days after the first Bill Period, CDG Host shall invoice Subscriber for the calculated Monthly Subscription Payment. Any amounts not paid prior to the invoice due date will accrue interest at a rate of eight percent (8%) per annum (and if less than eight percent (8%) per annum, the maximum rate permitted by law) from the invoice due date until CDG Host receives payment.
- c. Consolidated Billing. Subscriber agrees that Provider shall have the right, in its sole discretion, to enroll the Facility and Subscriber's account into the Utility's consolidated (net crediting) billing program, as described in Case 19-M-0463, In the Matter of Consolidated Billing for Distributed Energy Resources (the "Consolidated Billing Program"). Under the Consolidated Billing Program, Subscriber will not pay Provider directly for the Subscription Payments. Instead, the monthly Subscription Payments due under Section 4(c) shall be automatically taken from the Bill Credits Subscriber receives on Subscriber's utility bill and paid to Provider by the Utility. Subscriber will receive a credit on Subscriber's utility bill equal to ten (10) percent of the Bill Credits. Upon the Facility's entry into the Consolidated Billing Program, the invoice and payment language included in this Agreement will cease effect and be superseded by the consolidated billing procedures, unless and until the Facility and/or Subscriber's account is removed from the Consolidated Billing Program.
- d. CDG Host Adjustments to the Percentage Allocation. In any Bill Period, CDG Host will have the right to adjust the Percentage Allocation allocated to Subscriber in order to maximize the Project NMGF allocations to Subscriber and the Project NMGF's other subscribers as permitted under the CDG Program, the Tariff, and applicable law, provided that the Percentage Allocation will not exceed the Subscriber's historic annual kWh usage or forecasted usage if annual historic data is not available. In the event of such adjustment, the Monthly Subscription Payment shall be adjusted accordingly.
- e. Subscriber Adjustments to the Percentage Allocation. In the event Subscriber's historic annual kWh usage changes, Subscriber may submit a written request, within thirty (30) days of a CDG Host Anniversary, to modify Subscriber's Percentage Allocation accordingly. CDG Host may honor such request in its sole and absolute discretion. CDG Host does not guarantee, and Subscriber acknowledges that CDG Host does not guarantee the amount of electrical energy the Project NMGF will produce or the monetary value of the Bill Credits. In the event of such adjustment, the Monthly Subscription Payment shall be adjusted accordingly.

## 6. TAXES.

- a. Federal Tax Matters. Subscriber and CDG Host agree that (i) the sale of the Percentage Allocation shall be treated as a service contract pursuant to Internal Revenue Code Section 7701(e) 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 Internal

Revenue Code Section 7701(e)(3) does not apply to Subscriber's relationship to the CDG Host and/or Project NMGF.

- 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 Project NMGF, or the CDG Host if any, and where such taxes are attributable to the sale of the Percentage Allocation to the Subscriber.

#### 7. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

- a. CDG Host. CDG Host represents, warrants, and covenants to Subscriber:
  - i. CDG Host has, or in the ordinary course will obtain, all licenses, permits, approvals, and any other required documents to develop, construct, and operate the Project NMGF;
  - ii. CDG Host will comply with all provisions of the CDG Program the Tariff, and applicable law in accordance with industry standards; and
  - iii. CDG Host agrees to protect Subscriber's Data and except as may be required by this Agreement, applicable law, court order, or with Subscriber's consent, CDG Host will not publicly disclose Subscriber's Data, energy usage data, or billing information, unless such disclosures are made to CDG Host's financiers, lawyers, accountants, and agents of CDG Host and only to the extent reasonably necessary.
- b. Subscriber. Subscriber represents, warrants, and covenants to CDG Host:
  - i. Subscriber agrees not to install or procure any other on-site generation resource(s) during the Term or any Renewal Term of this Agreement that would cause Subscriber to no longer meet the Subscriber Eligibility Criteria;
  - ii. Subscriber acknowledges and agrees it will have no interest in or entitlement to any Energy Attribute;
  - iii. 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, except as provided in Section 8.
  - iv. Subscriber acknowledges and agrees that this Agreement and the Percentage Allocation will not be treated and are not intended to be treated as a security under Article 8 of the New York Uniform Commercial Code or the Securities Act of 1933;
  - v. Subscriber acknowledges and agrees that CDG Host does not guarantee the Project NMGF's production, and Subscriber has no defenses, set-offs, basis for withholding payments, counterclaims, or failure of performance claims against CDG Host;
  - vi. Subscriber acknowledges and agrees that it has a valid real property interest in the Service Address;
  - vii. Subscriber acknowledges and agrees Subscriber has been given the opportunity to ask questions and receive answers from CDG Host concerning the terms of this Agreement and any other information necessary for Subscriber to evaluate the merits and risks of entering into this Agreement, including the Percentage Allocation and/or Monthly Subscription Payment;
  - viii. Subscriber acknowledges and agrees it is not relying on statements made by CDG Host or any statements made by CDG Hosts' employees or agents with respect to any tax or other financial implications that may arise as a result of entering into or the implementation of this Agreement. Subscriber acknowledges and agrees that nothing in this Agreement or any other information provided by or on behalf of CDG Host in connection with this Agreement constitutes legal, tax, or financial advice;
  - ix. Subscriber acknowledges and agrees it will promptly notify CDG Host of any changes in Subscriber's Data; and
  - x. Subscriber's "automatic transfer of funds information" provided to CDG Host, if applicable, is true, accurate, and complete to enable Subscriber to automatically pay the Monthly Subscription Payment;

- 8. TERMINATION. This Agreement may be terminated by either Party at any time, provided the terminating Party provides the other Party with sixty (60) days' prior written notice of any termination made pursuant to this Section 8. The notice requirement in this Section 8 will not apply to any termination occurring upon expiration of the Initial Term or any Renewal Term, or in connection with any exercise of remedies pursuant to Section 10.

9. TRANSFER; ASSIGNMENT. No Party may assign or transfer this Agreement except as follows:

- a. CDG Host's Assignment or Transfer. CDG Host may assign or transfer this Agreement (including by collateral assignment) without providing Subscriber with prior notice and without obtaining Subscriber's prior consent, and upon any such assignment or transfer (other than collateral assignment), the assignor shall be released from all future obligations under this Agreement.

10. DEFAULT.

- a. Events of Default. The following shall constitute an "Event of Default":
  - i. A Party fails to make any payment due under this Agreement and such failure continues for a period of thirty (30) days;
  - ii. A Party breaches, fails to perform, or fails to comply with any representation, warranty, obligation, covenant or agreement described in this Agreement and such failure continues for a period of thirty (30) days after written notice thereof;
  - iii. A Party has provided material false or misleading financial or other information to the other Party to enter into this Agreement;
  - iv. Subscriber assigns, transfers, encumbers, or sells this Agreement or any part of its Percentage Allocation or Bill Credits in violation of Section 9; or
  - v. Subscriber makes an assignment for the benefit of creditors, admits in writing its insolvency, or is subject to a petition for dissolution or reorganization, voluntary or involuntary, under the U.S. Bankruptcy Code.
- b. Remedies. Upon the occurrence of an Event of Default, the non-defaulting Party may terminate this Agreement and exercise any rights and/or remedies available to it at law or in equity. Without limitation to the foregoing, in the event CDG Host is the non-defaulting Party, CDG Host will have the right to request the Electric Utility discontinue Subscriber's CDG Program account. CDG Host agrees that it shall not request that the Electric Utility terminate or suspend electric service to the Service Address. All rights, powers, and remedies provided under this Agreement are cumulative and not exclusive of any rights, powers, or remedies provided by applicable law. CDG Host may terminate the agreement and replace the defaulting subscriber, which will not waive payments owed or default fees. In the event this Agreement is terminated, Subscriber will remain responsible for payment in connection with any Bill Credits allocated to Subscriber's CDG Program account prior to such termination date and will not have any further right to receive Bill Credits that have not been allocated to Subscriber's CDG Program account as of such termination date.

11. LIMITATION OF LIABILITY, INDEMNIFICATION & DISPUTE RESOLUTION.

- a. Force Majeure. Except as specifically provided in this Agreement, if by reason of Force Majeure, CDG Host is unable to carry out, either in whole or in part, any of its obligations described in this Agreement, CDG Host shall not be deemed to be in default during the continuation of such inability, provided that, within a reasonable time after the occurrence of the Force Majeure event, CDG Host gives Subscriber notice describing the particulars of the occurrence and the anticipated period of delay, and uses reasonable efforts to remedy the cause(s) preventing it from carrying out its obligations.
- b. 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, CDG HOST'S LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT MAY NOT EXCEED SUBSCRIBER'S AVERAGE ANNUAL SUBSCRIPTION PAYMENT.
- c. Indemnification. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBSCRIBER AGREES TO INDEMNIFY, PROTECT DEFEND, AND HOLD HARMLESS CDG HOST 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.
- d. No Warranty. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CDG HOST MAKES

NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE PROJECT NMGF OR ITS OBLIGATIONS HEREUNDER. CDG HOST DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CDG HOST DOES NOT WARRANT OR GUARANTEE ANY SAVINGS, THE AMOUNT OF ELECTRICITY, PERCENTAGE ALLOCATION, OR BILL CREDITS.

- e. Waiver. Any delay or failure of a Party to enforce any of the provisions of this Agreement, or to require performance by the other Party of any of the provisions of this Agreement, shall not be construed to (i) be a waiver of such provisions or a Party's right to enforce that provision, or (ii) affect the validity of this Agreement.
- f. Severability. If any portion of this Agreement is determined to be invalid or unenforceable in any respect under applicable law, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of the Agreement will be valid and enforceable to the fullest extent permitted by applicable law, unless such invalidity or unenforceability frustrates or negates an essential purpose of this Agreement.
- g. Dispute Resolution. In the event of a dispute, disagreement, or claim between Subscriber and CDG Host arising out of or in connection with this Agreement, the Parties shall first attempt to resolve the dispute, disagreement, or claim amicably and in good faith. Subscriber agrees to contact CDG Host by telephone or in writing concerning any dispute involving it. If the dispute, disagreement, or claim is directed to the Electric Utility, Subscriber shall call the Electric Utility at 1 (800) 572-1111. A dispute, disagreement, or claim may be submitted by either Party at any time to the New York State Department of Public Service by visiting their website at [www.dps.state.ny.us](http://www.dps.state.ny.us), by calling 1 (800) 342-3377, or by writing to the following address: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223.
- h. Arbitration. The Parties agree that any dispute, disagreement, or claim that cannot be resolved under Section 11(g) above will be settled on an individual basis by arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be held in the AAA location nearest to the Subscriber, or otherwise in the Borough of Manhattan. There shall be a single arbitrator. For disputes of less than \$5,000 involving a Subscriber, the other Party shall advance any AAA fees other than any initial filing fee required of Subscriber pending resolution of the arbitration. The arbitrator shall have the power to require repayment by Subscriber of all such fees advanced. Any award in arbitration may be confirmed in any court of competent jurisdiction. If there is any dispute, disagreement, or claim for which arbitration cannot be provided, the Parties agree to submit to the personal jurisdiction of the New York state and federal courts for the purposes of litigating any such dispute, disagreement or claim.
- i. Waiver of Jury Trial; No Class Action. EACH OF THE PARTIES, BY SIGNING THIS AGREEMENT, HEREBY WAIVES THE RIGHT TO A JURY TRIAL EXCEPT TO THE EXTENT OF THE PROCEDURES OF THE NEW YORK PUBLIC SERVICE COMMISSION FOR SERVICE TO MULTIPLE DWELLINGS UNDER THE HOME ENERGY FAIR PRACTICES ACT, OR SIMILAR REGULATORY PROCEDURES ON A COLLECTIVE BASIS. EACH PARTY AGREES THAT IT MAY ONLY BRING CLAIMS AGAINST THE OTHER PARTY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE PARTIES ACKNOWLEDGE THAT THIS CLASS ACTION WAIVER IS MATERIAL AND ESSENTIAL TO THE AGREEMENT AND IS A NON-SEVERABLE PORTION THEREOF.

## 12. LENDER AND INVESTOR ACCOMMODATIONS.

- a. Subscriber acknowledges that CDG Host may finance the construction, development, and installation of the Project NMGF through one or more financial partners or financial institutions, or their assigns (collectively hereafter "Lender/Investor") and that CDG Host may sell or assign the Project NMGF and/or may secure CDG Host's obligations thereunder by, among other encumbrances, a pledge or collateral assignment of this Agreement and a first priority security interest in this Agreement and the Project NMGF. Subscriber hereby consents to the collateral assignment of this Agreement to a Lender/Investor.
- b. Subscriber acknowledges and agrees that Lender/Investor approval and consent may be required

for the following: (i) any modification to the operation of maintenance of the Project NMGF or (ii) any amendment to this Agreement.

- c. Subscriber acknowledges and agrees that under no circumstances shall (i) Lender/Investor be liable to Subscriber for any act or omission of CDG Host; (ii) Lender/Investor be subject to any defenses or offsets that Subscriber may have against CDG Host under this Agreement; or (iii) Lender/Investor be liable with respect to any breach of any representation, warranty, or covenant made by CDG Host to Subscriber under this Agreement.

13. LENDER AND INVESTOR'S DEFAULT RIGHTS. If CDG Host defaults under CDG Host's financing documents with a Lender/Investor, or under this Agreement, Lender/Investor shall be entitled to exercise any of CDG Host's rights and obligations under this Agreement. Lender/Investor may also be entitled to exercise all rights and remedies of secured or preferred parties generally with respect to this Agreement and the Project NMGF, including, but not limited to the following:

- a. Lender/Investor may have the right, but not the obligation, to pay all sums due from CDG Host, perform any other act required of CDG Host, and to cure any default by CDG Host in which case this Agreement will continue in full force and effect.
- b. Lender/Investor may have the option to sell its interest in this Agreement or the Project NMGF. If Lender/Investor exercises that remedy, it shall not constitute a default under this Agreement, and such sale shall not require Subscriber's prior consent.
- c. Upon the reasonable request of Lender/Investor and upon Lender/Investor providing Subscriber with all required disclosure information, Subscriber agrees to enter into a new Agreement with Lender/Investor or their assigns under substantially the same terms as this Agreement within thirty (30) days of the termination of this Agreement.
- d. Upon the reasonable request of CDG Host or Lender/Investor, Subscriber agrees to execute and deliver to CDG Host or Lender/Investor any document, instrument, or statement in such form as CDG Host or Lender/Investor may require by which Subscriber acknowledges and confirms that the legal and beneficial ownership of this Agreement or the Project NMGF remains in CDG Host or its affiliate or as is otherwise reasonably requested by Lender/Investor in order to create, perfect, continue, or terminate the security or equitable interest in this Agreement or the Project NMGF in favor of Lender/Investor.

14. MISCELLANEOUS.

- a. Notices. All notices and other formal communications which any Party may give to another under or in connection with this Agreement shall be in writing, and shall be deemed delivered upon receipt thereof.
- b. Entire Agreement. This Agreement, and all Exhibits and documents referenced herein, contain the entire agreement between Parties with respect to the subject matter hereof, and supersede all other understandings or agreements between the Parties relating to the subject matter hereof.
- c. No Joint Venture or Third-Party Beneficiaries. Nothing in this Agreement shall be deemed to create a joint venture or partnership between the Parties. This Agreement is intended solely for the benefit of the Parties hereto.
- d. Amendments. This Agreement may not be amended without the prior written consent of both the CDG Host and the Subscriber
- e. Binding Effect. This Agreement is binding upon the Parties and their successors and permitted assigns.
- f. Survival. The provisions of Section 11, Section 12, Section 13, and Section 14 of this Agreement, and any payment obligations accrued prior to termination, shall survive the expiration or earlier termination of this Agreement.
- g. Governing Law. The Agreement is made in the state of New York and will be governed by New York law, without regard to principles of conflicts of law, together with any applicable federal law.
- h. Home Energy Fair Practices Act; Disclosure Form. This Agreement and Delaware River Solar's provision of the Services are subject to the Home Energy Fair Practices Act ("HEFPA") (a summary of which can be found at <http://www.dps.ny.gov/>) and the Uniform Business Practices for Distributed Energy Resources Suppliers (a summary of which can be found at <https://www.nyserda.ny.gov>, which provide you with certain rights and protections relating to late charges, disputes, and other matters. See 16 N.Y. Codes, Rules, Regs. 11.1 through 11.22 for additional details regarding your rights under HEFPA. The disclosure form attached hereto as

Exhibit 1 describes certain key terms of this Agreement and must be provided to you by law.

- i. Counterparts. This Agreement may be executed and delivered in identical counterparts by exchange of electronic copies showing the signatures of the Parties, which shall constitute originally signed copies of the same Agreement requiring no further execution. Each counterpart, when assembled, will be a complete original and fully effective instrument. Any acceptance of this Agreement by affirmation through a DocuSign Electronic Signature, or similar system, shall be deemed a binding acceptance of this Agreement and shall be valid as a signature.
- j. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- k. Notice to Subscriber. Subscriber should not sign this agreement if there are any blank spaces. Subscriber should retain a copy of this Agreement to protect its legal rights. By signing this Agreement, Subscriber acknowledges that Subscriber has read and understands this Agreement and its Exhibits in their entirety, and that Subscriber has received a copy of this Agreement and all disclosure information. Subscriber also acknowledges receiving oral notice of Subscriber's right to cancel this contract at any time prior to midnight of the third business day after the Effective Date in addition to the written notice of that right to cancel this Agreement.

## Exhibit A

### Definitions

- a. "Agreement" means this Solar Community Distributed Generation Agreement;
- b. "Bill Credits" means the credits applied to offset the kWh charges on Subscriber's Electric Utility bill. Bill Credits are calculated by finding the product of (i) the Percentage Allocation multiplied by (ii) the Excess Generation during a given Bill Period and (iii) the Subscription Rate (inclusive of any applicable supply and delivery charges) applicable to Subscriber.
- c. "Bill Period" means one (1) calendar month, commencing from COD;
- d. "CDG Host" means project sponsor and its successors, assigns, designees, and agents;
- e. "CDG Host Anniversary" means each twelve (12) month period after COD;
- f. "CDG Program" means the New York State Community Distributed Generation program authorized by the New York State Public Service 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;
- g. "Commercial Operation Date" or "COD" means the date upon which the Project NMGF is authorized by the Electric Utility to generate and deliver electrical energy to the transmission system;
- h. "Effective Date" means the date this Agreement was executed as indicated on the Cover Page of this Agreement;
- i. "Electric Utility" means the New York State Electric and Gas Corporation, or any successor in interest;
- j. "Energy Attributes" means any and all direct, indirect, or derivative benefits or incentives of owning and/or operating the Project NMGF including but not limited to ancillary services, environmental attributes, renewable energy credits, green tags, green tag reporting rights, carbon offset credits, rebates, tax attributes, tax credits, depreciation, depreciation bonuses, cost recovery deductions, the NY-Sun Incentive Program, federal, state or local incentives, or any other attributes, benefits, or incentives of owning the Project NMGF of any kind.
- k. "Excess Generation" means the number of kWhs generated by the Project NMGF and supplied by the CDG Host to the Electric Utility during a given Bill Period that exceeds the number of kWhs supplied by the Electric Utility to the CDG Host during such Bill Period;
- l. "Force Majeure" means any event or circumstance beyond the reasonable control of CDG Host and not resulting from CDG Host's negligence.
- m. "kW(s)" means one-thousand (1,000) watts of electrical power;
- n. "kWh(s)" means a measure of electrical energy equivalent to a power consumption of one kW for one (1) hour;
- o. "Lender/Investor" is defined in Section 12(a).
- p. "Monthly Subscription Payment" is defined on the Cover Page of this Agreement.
- q. "NYISO" means the New York Independent System Operator, which operates the state of New York's power grid and wholesale electricity markets;
- r. "NYISO Zone(s)" means one or more of the eleven (11) regional market zones operated by NYISO;
- s. "Percentage Allocation" has the meaning set forth on the Cover Page of this agreement, as it may be adjusted from time to time in accordance with Section 5(c) and 5(d).
- t. "Project NMGF" means the Solar NMGF from which Subscriber purchases the Percentage Allocation;
- u. "Renewal Term" is defined in Section 3;
- v. "Service Address" means the Subscriber's metered service address; w. "Solar NMGF" means a solar photovoltaic electric generation facility eligible for net-metering as a non-residential customer in conformance with New York Public Service Law Section 66-j;
- w. "Subscriber" means the person or persons identified as purchasing the Percentage Allocation, and which is an electric service customer of the Electric Utility;
- x. "Subscriber's Data" is defined in Section 4(e);
- y. "Subscriber Eligibility Criteria" is defined in Section 4(c);
- z. "Subscription Rate" is defined on the Cover Page of this Agreement.
- aa. "Subscriber's Service Classification" means Service Classification No. 1 or Service Classification No. 6, as the case may be, and as further set forth in the Tariff;

- ab. "Tariff" means the New York State Electric and Gas Corporation Schedules for Electric Service, P.S.C. No: 119 - Electricity and P.S.C. No:120 - Electricity, as amended, modified, or superseded from time to time;
- ac. "Term" is defined in Section 3.

(CDG Host Copy)

## **NOTICE OF CANCELLATION**

### **NOTICE OF CANCELLATION**

**DATE OF TRANSACTION: 11/10/2021**

**YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.**

**IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE CDG HOST OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.**

**TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE, OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO DELAWARE RIVER SOLAR, LLC, AT PUT COMPANY ADDRESS HERE NOT LATER THAN MIDNIGHT OF [DATE THAT IS THREE BUSINESS DAYS FROM THE DATE SUBSCRIBER SIGNED THE SOLAR COMMUNITY DISTRIBUTED GENERATION SUBSCRIBER AGREEMENT].**

**I, JOE , HEREBY CANCEL THIS TRANSACTION ON 11/10/2021.**

**CUSTOMER'S SIGNATURE:**

\_\_\_\_\_

(Subscriber Copy)

## **NOTICE OF CANCELLATION**

### **NOTICE OF CANCELLATION**

**DATE OF TRANSACTION: 11/10/2021**

**YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.**

**IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE CDG HOST OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.**

**TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE, OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO DELAWARE RIVER SOLAR, LLC, AT PUT COMPANY ADDRESS HERE NOT LATER THAN MIDNIGHT OF [DATE THAT IS THREE BUSINESS DAYS FROM THE DATE SUBSCRIBER SIGNED THE SOLAR COMMUNITY DISTRIBUTED GENERATION SUBSCRIBER AGREEMENT].**

**I, JOE , HEREBY CANCEL THIS TRANSACTION ON 11/10/2021.**

**CUSTOMER'S SIGNATURE:**

\_\_\_\_\_