

**Statewide Solar for All Agreement**

**for \_\_\_\_\_ [S-SFA Project Name and Identifier]**

This Agreement (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Consolidated Edison Company of New York, Inc. (the “Utility” or “Con Edison”), a New York incorporation with a principal place of business at 4 Irving Place, New York, NY 10003 and \_\_\_\_\_, a Statewide Solar For All (“S-SFA”) project (the “S-SFA Project Host” or “Host”), a [state] \_\_\_\_\_ [type of legal entity] \_\_\_\_\_ with a principal place of business at \_\_\_\_\_. The Utility and the S-SFA Project Host are also individually referred to herein as a “Party” or collectively as “Parties.”

S-SFA Project Compensation Level: \_\_\_\_\_%, as listed on the S-SFA Compensation Statement filed with the Commission and in effect upon payment of at least 25 percent of interconnection costs or when the interconnection agreement has been executed, if no such payment is required.

The S-SFA compensation level percentage is subject to reduction based on whether or not the project received the Low-Income Bonus Tax Credit (LICBTC) prior to interconnection.

**Whereas** the New York State Public Service Commission (“Commission”) authorized the Statewide Solar for All Program (“S-SFA”) in its May 16, 2024, Order Approving Statewide Solar for All Program with Modifications (“S-SFA Program Order”); and

**Whereas**, customers enrolled in the Utility’s low-income affordability program (“EAP”) that reside in a disadvantaged community (“DAC”) (as defined by the New York State’s Climate Justice Working Group) are automatically enrolled in the S-SFA program and the Utility calculates and distributes the bill credits generated by participating S-SFA projects to each S-SFA Program Customer as a monthly credit on their electric utility bill; and

**Whereas** the S-SFA Project Host is located at \_\_\_\_\_ [utility service address], and identified by the Utility as \_\_\_\_\_ (the “S-SFA Project”); and

**Whereas** the S-SFA Project Host wishes to enroll the S-SFA Project in the S-SFA Program of the Utility; and

**Whereas**, the Utility has established a billing process to permit the Utility to calculate the total value of the S-SFA Project Value Stack Credits, remit a percentage of the value of such credits to the S-SFA Project Host (less the Utility Administrative Fee retained by the Utility), and provide the remaining value of such credits on the S-SFA Customer electric utility bills; and

**Whereas**, the Utility has filed tariff leaves with the Commission effectuating the S-SFA Program per the S-SFA Program Order and is willing to implement the S-SFA Program for the S-SFA Project, subject to the terms and conditions of this Agreement, and Commission orders.

**NOW THEREFORE**, the Parties hereto, each in consideration of the agreement of the other, which the Parties agree is sufficient, do hereby agree as follows:

**1. Definitions.** Any capitalized terms used in this Agreement shall be defined as set forth below:

- 1.1. Commission** is the New York State Public Service Commission.
- 1.2. Confidential Information** is as defined in Section 9 of this Agreement.
- 1.3. Electricity Tariff** refers to the Utility's effective P.S.C. No. 10, Schedule for Electricity Service, or the Utility's effective P.S.C. No. 12, Schedule for PASNY Delivery Service, as they may be applicable to the S-SFA Project Host, approved by the Commission and which may be amended or succeeded from time to time.
- 1.4. S-SFA Program** is the Utility's Statewide Solar for All program as implemented pursuant to the S-SFA Program Order where the Utility applies the portion of the S-SFA Project's Value Stack Credits to the SFA Program Customers' electric utility accounts that remains after the to the S-SFA Project Payment, and after the Utility Administrative Fee.
- 1.5. S-SFA Program Customer** is an electric customer of the Utility who is eligible to receive S-SFA credits, as defined in the Electricity Tariff.
- 1.6. S-SFA Project Host** is the entity that organizes, owns, and/or operates a S-SFA project as set forth in the Utility's Electricity Tariff.
- 1.7. S-SFA Project Payment** is the monthly payment from the Utility to the S-SFA Project Host (or its assigned payee) based on the Value Stack compensation in the monthly period, multiplied by the Compensation level to the S-SFA project, as defined in the Electricity Tariff.
- 1.8. S-SFA Project Identification Number** is the interconnection case number in the Utility's interconnection portal for the underlying S-SFA Project.

- 1.9. Representative** means, in respect of any person, such person's affiliates and its affiliates' directors, officers, employees, contractors, subcontractors, advisors, insurers, and existing and potential sources of debt or equity financing and their advisors.
- 1.10. Utility Administrative Fee** is the amount of the monthly value of the S-SFA Project's Value Stack Credits that the Utility will retain, as approved by the Commission.
- 1.11. Value Stack Credits** are the credits generated from electricity generated from the S-SFA Project pursuant to Rider R of the P.S.C. No. 10 Electricity Tariff (or the Value Stack Tariff for PASNY Customer-Generators of the P.S.C. No. 12 Electricity Tariff, if applicable) of the Electricity Tariff.
- 2. Effective Date.** This Agreement shall be effective upon the last date written on the signature page below
- 3. Term/Termination**
- 3.1.** The term of this Agreement shall be from the Effective Date until the date 25 years from the S-SFA Project's in-service date. This Agreement shall remain in effect until terminated (a) in accordance with its terms or (b) by an order of the Commission, whichever shall occur first.
- 3.2.** Notwithstanding anything to the contrary elsewhere in this Agreement or in the Electricity Tariff, the Utility, by written notice to the S-SFA Project Host, may if permitted in a proceeding, terminate this Agreement in whole or in part with respect to the S-SFA Project or suspend further performance without terminating this Agreement upon the occurrence of any of the following: (a) the S-SFA Project Host or S-SFA Project terminates or suspends doing business, except where such suspension is caused by Force Majeure; (b) the S-SFA Project Host or S-SFA Project becomes subject to any bankruptcy or insolvency proceeding under federal or state law (and which proceeding is not removed or dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to the direct control of a transferee, receiver or similar authority in relation to a bankruptcy or insolvency proceeding, or (except as otherwise provided in Section 15.7) makes an assignment for the benefit

of creditors; (c) the S-SFA Project Host commits a material breach of any of its obligations under this Agreement with respect to the S-SFA Program and has not cured such breach within thirty (30) days after receipt of a written notice from the other Party specifying the nature of the breach (provided, however, that if such breach cannot be cured within thirty (30) days, the cure period will be extended as long as S-SFA Project Host is pursuing diligent efforts to cure, such extended cure period not to exceed an additional thirty (30) days); or (d) the S-SFA Project is in material violation of the Utility's electric standards, including but not limited to provisions related to interconnection and safety and has not cured such violation within thirty (30) days after receipt of a written notice from the other Party specifying the nature of the violation (provided, however, that if such breach cannot be cured within thirty (30) days, the cure period will be extended as long as S-SFA Project Host is pursuing diligent efforts to cure, such extended cure period not to exceed an additional thirty (30) days). Notwithstanding the aforementioned cure provisions or any other provision of this Agreement, the Utility may take immediate actions with respect to the S-SFA Project interconnection if deemed necessary by the Utility, in its sole discretion, to protect the safety of the public, customers, or employees, or the operation of the electric system.

- 3.3.** The foregoing notwithstanding, the S-SFA Project Host may with a minimum of 12-months' notice to the Utility prior to the beginning of the Program Year, as specified in the Utility's Electricity Tariff, notify the Utility that the S-SFA Project no longer wishes to participate in the S-SFA Program and unenroll the S-SFA Project from the S-SFA Program.

#### **4. Representations.**

- 4.1.** The S-SFA Project Host represents that it is and shall remain in compliance with all applicable laws, tariffs, regulations, including the Electricity Tariff, and the Utility's electric standards, safety, and cybersecurity standards with respect to the S-SFA Project during the term of this Agreement.
- 4.2.** Each person executing this Agreement for the respective Parties represents and warrants that he or she has authority to bind that Party.

- 4.3. Each Party represents that (a) it has the full power and authority to execute, deliver, and perform its obligations under this Agreement; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes that Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 4.4. The Utility and the S-SFA Project Host shall exercise all reasonable care, diligence, and good faith in the performance of their duties pursuant to this Agreement and carry out their duties in accordance with applicable recognized professional standards.

## **5. S-SFA Project Rights and Responsibilities**

- 5.1. The S-SFA Project Host agrees to the Compensation Level, as described in the Electricity Tariff, including, if applicable, the Compensation Level set forth in the Electricity Tariff for projects that received the Low-Income Community Bonus Tax Credit ("LICBTC") adjustments.
- 5.2. The S-SFA Project Host shall respond promptly (within no more than two (2) business days) to the Utility's requests for S-SFA Program related data to the extent such data is required for the Utility to perform hereunder.
- 5.3. The S-SFA Project Host shall cooperate with and provide the Utility with necessary documentation relating to any transactions resulting hereunder.
- 5.4. The S-SFA Project Host agrees that services rendered by the Utility shall not relieve the S-SFA Project Host from any obligation to maintain records or otherwise comply with applicable laws. The S-SFA Project Host agrees that it will maintain backup data and files for all information provided to the Utility as protection against loss of such information.

## **6. Utility Rights and Responsibilities**

- 6.1. The Utility shall remit the S-SFA Project Payment to the S-SFA Project Host via Automated Clearing House (ACH). Such remittance shall be performed at least monthly and shall be completed in a commercially reasonable time frame.

- 6.2. The Utility shall provide Credits on S-SFA Program Customer electric utility bills.
  - 6.3. In the event the Utility is required to cancel and rebill from the S-SFA Project Host, the S-SFA Project Host Payment will reflect the effect of those adjustments.
  - 6.4. The Utility shall be responsible for resolving Utility billing-related customer inquiries and complaints.
7. **Utility Compensation.** To compensate the Utility for the provision of the S-SFA Program, the Utility will retain the Utility Administrative Fee, as described in the Electricity Tariff.
8. **Taxes.** The Utility is not responsible for assessing or collecting any taxes on payments made to the S-SFA Project Host. Nothing in this Agreement shall be construed as imposing upon the Utility the obligation of remitting to any federal, state, or local taxing authority those taxes that are the collection and remittance responsibility of the S-SFA Project Host.

## 9. Confidential Information

- 9.1. Except as otherwise provided herein, the Parties agree not to disclose to any third party (other than their Representatives) and to keep confidential, and to cause their Representatives who have received Confidential Information (as defined below) hereunder not to disclose to any third party and to keep confidential, any and all non-public, proprietary customer information, written or oral, obtained by either Party from or on behalf of the other relating to this Agreement (including but not limited to, all business-sensitive and competitive information disclosed by either Party to the other Party, including billing information, issues, or data associated with any customer). Information described in this paragraph 9.1 and described in paragraph 9.2 of this Section 9 is collectively referred to as “Confidential Information.” Each Party will require its Representatives who have received Confidential Information to comply with this Agreement and any other agreement regarding the exchange of Confidential Information, including but not limited to the terms and conditions of an applicable Interconnection Agreement, Data Security Agreement, Professional Services Contract, General Contract Conditions, or Non-Disclosure Agreement.

- 9.2.** In addition, each Party acknowledges that all information furnished and identified by the other Party as being confidential or proprietary information, trade secret, confidential commercial information, critical infrastructure, or other information that is confidential pursuant to state, federal or local law, regulation or rule, is and shall remain the sole and exclusive property of such other Party.
- 9.3.** Information and data provided to the Utility by the S-SFA Project Host under this Agreement shall be used by the Utility for the purposes of billing, receiving, depositing, posting, and processing the amounts due the S-SFA Project Host. Confidential Information may be disclosed by the receiving Party to its employees, agents, consultants, and Representatives on a need-to-know basis only.
- 9.4.** The receiving Party is required to destroy Confidential Information within six (6) years from the date received or the date when the information is no longer required for the operation of the S-SFA Program, whichever occurs last, and thereafter, to destroy such Confidential Information or, at the request of the disclosing Party, return such Confidential Information.
- 9.5.** The confidentiality obligations of this Article do not apply to information which: (a) is already known to the Party free of any restriction at the time it is obtained from the other Party; (b) is subsequently learned by one Party from an independent third party free of any restriction and without breach of this Agreement; (c) is or becomes publicly available through no wrongful act of either Party; (d) is independently developed by one Party without reference to any Confidential Information of the other; (e) is disclosed by one Party to a third party, with the express written permission of the other Party; (f) is disclosed to the extent required by applicable laws and regulations or by any subpoena or similar legal process (where the disclosing Party must seek confidential treatment from the appropriate court of law or regulator of competent jurisdiction and must inform the non-disclosing Party as soon as practicable to allow the non-disclosing Party to intervene and seek protection of the Confidential Information); or (g) is disclosed pursuant to the lawful requirement or formal request of a governmental agency or a party in any regulatory proceeding, provided that if one Party is requested or, in the written opinion of its counsel, legally compelled by a governmental agency or a party in any regulatory proceeding to disclose any Confidential Information of the other Party, such party, to the extent permitted by law, agrees to provide the other Party with prompt written notice of such request so

that the other Party has the opportunity to pursue its legal and equitable remedies regarding such potential disclosure. The receiving Party further agrees that if the disclosing Party is not successful in precluding the requesting legal or governmental body from requiring disclosure of the Confidential information, the receiving Party will furnish only that portion of the Confidential Information which, in the written opinion of its counsel, it is legally required to disclose, and will exercise all reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

- 9.6.** Each Party acknowledges and agrees that its breach or threatened breach of this Article may cause the other Party irreparable harm which may not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach by either Party, such Party agrees to the granting of equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in addition to any legal remedies to which the other Party may be entitled, without proof of actual damages.
- 9.7.** The provisions of this Article shall survive the expiration or termination of this Agreement.

## **10. Resolution of Disputes between Utility and CDG Sponsor**

- 10.1.** Each Party agrees to attempt to resolve all disputes arising under this Agreement promptly, equitably, and in a good faith manner.
- 10.2.** If the Parties fail to resolve any dispute under this Agreement within ten (10) days after written notice of the dispute, the Parties agree to submit the dispute to mediation by a mutually acceptable mediator, in a mutually convenient location in New York State, in accordance with the then current International Institute for Conflict Prevention & Resolution Procedure, or to mediation by a mediator approved by the Commission. The Parties agree to participate in good faith in the mediation for a period of up to ninety (90) days. If the Parties are not successful in resolving their disputes through mediation, the Parties may then refer the dispute for resolution to the Commission, which shall maintain continuing jurisdiction over this Agreement.

## **11. Indemnification**

- 11.1.** The S-SFA Project Host shall indemnify, defend, and hold the Utility and its corporate affiliates and their respective officers, directors, trustees, employees, agents, successors, Representatives and assigns harmless from and against any and all loss, liability, damage or expense (including reasonable attorneys' fees), statutory or administrative fines or penalties or claims for injury or damages arising out of the performance of this Agreement or breach thereof by S-SFA Project Host, including any claims, demands, causes of action, litigation, suits, proceedings, hearings or investigations (collectively "Claims") by a third party for payments based upon any agreement or understanding alleged to have been made by the third party, directly or indirectly, with CDG Sponsor in connection with any of the transactions contemplated by this Agreement, except to the extent caused by the gross negligence or willful misconduct of Utility.
- 11.2.** The obligations of this Article 11 will survive the expiration, suspension or termination of this Agreement or the S-SFA Program.

## **12. Force Majeure**

- 12.1.** Neither Party shall be considered in default under this Agreement or responsible in tort, strict liability, contract or other legal theory to the other Party for damages of any description for any interruption or failure of service or deficiency in the quality or quantity of service, or any failure to perform if such failure is caused by factors beyond the Party's reasonable control that by exercise of reasonable diligence the Party is unable to prevent or overcome, including without limitation, storm, flood, lightning, earthquake, explosion, civil disturbance, labor dispute, sabotage, war, insurrection, act of God or the public enemy, action of a court, or public authority ("Force Majeure").
- 12.2.** If any Force Majeure occurs, the Party delayed or unable to perform shall give immediate written notice to the other Party. During the pendency of the Force Majeure, the duties of the Party affected by the Force Majeure conditions shall be abated and shall resume without liability thereafter, provided that an obligation to make payments under this Agreement shall not be excused by the occurrence of an event of Force Majeure.

**13. Security Interest.** The failure by the S-SFA Project Host to fulfill any obligation of the S-SFA Project Host pursuant to this paragraph shall specifically be deemed a breach of a material term or condition of this Agreement. Nothing in this Section 13 will be deemed to provide Utility with any rights to the S-SFA Project Payment to S-SFA Project Host. If an entity providing material financing to a S-SFA Project Host requires the Utility to take a subordinate security interest before it will provide financing to the S-SFA Project Host, the S-SFA Project Host may request the Utility to take a subordinate interest. The Utility's agreement to take a subordinate security interest to the financier will not be unreasonably withheld, delayed, or conditioned. No subordination agreement by the Utility will be effective unless it is in writing and signed by both Parties.

#### **14. Miscellaneous**

**14.1. Entire Agreement.** This Agreement, all Exhibits, and attachments hereto and all documents referenced herein, constitute the entire agreement between the Parties and supersedes all other agreements, communications, and representations. Paragraph headings are for convenience only and are not to be construed as part of this Agreement.

**14.2. Amendment.** Unless otherwise provided herein, no modification of, or supplement to, the terms and provision stated in this Agreement shall be or become effective without the written consent of both Parties. If the S-SFA Program is suspended by statute or Commission order, this Agreement will be modified in accordance with such statute or order.

**14.3. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same document.

**14.4. Severability.** In the event that any portion or part of this Agreement is deemed invalid, against public policy, void or otherwise unenforceable by a court of law, the validity and enforceability of the remaining portions thereof shall otherwise be fully enforceable.

**14.5. Change in Law.** To the extent that new mandatory regulatory, legislative or accounting changes, tax law changes, other regulatory policy changes, or other events

materially affect the ability of either Party to comply with the provisions of this Agreement, including but not limited to material financial consequence, managerial, mechanical or technical compliance, the Parties agree to meet and use best efforts to renegotiate the terms and conditions of this Agreement to restore the position of the detrimentally affected Party to a financially neutral position or to be able to meet the managerial, mechanical and technical requirements of compliance. Methods that the Parties may consider to restore the detrimentally affected Party's ability to comply with this Agreement shall include, but not be limited to cost recovery through rates, payment for service by the unaffected Party, technical assistance, or other assistance as may be agreed upon. Renegotiated terms and conditions shall be effective when reduced to writing and signed by both Parties. If the Parties are unable to renegotiate acceptable changes, they may avail themselves of the dispute resolution mechanism set forth in Section 10 of this Agreement, and the existing terms and conditions of this Agreement shall continue to be effective through the conclusion of such dispute resolution mechanism.

**14.6. Waiver.** No waiver by any Party of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any other present or future default, whether of a like or different character. No delay by either Party in enforcing any of its rights hereunder shall be deemed a waiver of such rights.

**14.7. Assignment.**

**14.7.1.** Neither Party may assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed or conditioned, provided however that the S-SFA Project Host has a right to assign (and/or collaterally assign, in connection with a financing transaction) its right to payments to be made by the Utility hereunder. The S-SFA Project Host shall provide the Utility with a copy of the document in which the assignment is made or so much of the document as may be necessary to make clear the identity of the parties thereto and the terms of the assignment. The S-SFA Project Host hereby waives any claim against the Utility for making payments pursuant to the assignment.

- 14.7.2.** An assignment, transfer or other disposition of the Utility's rights and obligations under this Agreement resulting from or associated with (i) any restructuring of the assets of the Utility or (ii) any acquisition, consolidation, merger or other form of combination of the Utility by, into, or with any person or entity shall not be subject to the prior notice and consent requirements of this sub-article.
- 14.7.3.** No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement. Any assignment, transfer or other disposition of this Agreement, or any rights, duties, or obligations hereunder by either Party, except as specifically permitted herein, is in violation of this sub-article and void.
- 14.8. Subcontracting.** Each Party may subcontract all or any portion of the performance to be rendered hereunder without the express approval of the other as to the tasks to be subcontracted and the subcontractor, provided, however that each Party shall be fully responsible for the acts and omissions of its subcontractors and their agents as it is for its own acts and omissions.
- 14.9. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement. Nothing contained herein shall be deemed to confer any rights or grant any remedies or give any benefit to any third party.
- 14.9.1. Relationship of the Parties.** This Agreement is not intended, and shall not be construed to create any association, joint venture, agency relationship or partnership between the Parties of to impose any such obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of or otherwise bind the other Party.
- 14.10. Governing Law.** This Agreement is governed by the laws of the State of New York without regard to the doctrines governing choice of law. All disputes arising hereunder shall be brought either before the Commission the state courts of the State of New York, or a federal court located in the State of New York.
- 14.11. Construction.** In the event of any conflict between the provisions of this Agreement and the provisions of the Electricity Tariff, the applicable provisions of the Electricity Tariff shall apply.

**14.12. Notices.** Except as otherwise provided herein, any notices given under this Agreement shall be in writing and shall be delivered to the recipient Party at the address set forth in Exhibit A, by hand or sent by (a) certified mail, return receipt requested, first class postage prepaid, or (b) nationally recognized courier service. Notices given hereunder shall be deemed to have been given upon receipt or refusal to receive. The address to which such notices shall be given by either Party may be changed by written notice given by such Party to the other Party pursuant to this sub-article.

**14.13. Other Remedies.** Nothing contained herein shall be construed as a limitation on the right of either Party to pursue any remedy it may have at law or in equity.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**S-SFA Project Host** \_\_\_\_\_

**UTILITY** Con Edison \_\_\_\_\_

Name (Print): \_\_\_\_\_

Name (Print): \_\_\_\_\_

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

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

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

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

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

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

## EXHIBIT A

All notices and information addressed to the Utility shall be addressed as follows:

Con Edison Clean Energy Billing & Crediting

4 Irving Pl, 9<sup>th</sup> Floor

New York, NY 10003

[customerservice@valuestack.coned.com](mailto:customerservice@valuestack.coned.com) (preferred)

All notices and information addressed to the S-SFA Project Host shall be addressed as follows:

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