

Community Solar Subscription Agreement

Parties to this Agreement:

Provider*:

Nexamp, Inc.

Contact: Nexamp Community Solar Team
Email: support@nexamp.com
101 Summer St, 2nd Floor
Boston, MA 02110

Customer:

Name: Town of Roseboom Supervisor
Email: roseboomtownsupervisor@gmail.com
Phone: 607 264 8433
Mailing Address:
126 County Highway 50 Barn
Cherry Valley NY 13320

Solar Project: The “Project” is a community solar project located within the following utility territory:

Meter Address (if different from Mailing Address)

Utility: National Grid (NY)

Utility Account number (“Account”): 48013-57106

“Service Classification”: SC2

“Project Operation Date” is anticipated to be (or was): 2020-04-01

“Discount”: Ten percent (10%)

“Subscription Size”: 6.0 kW DC

If the Project is not currently operational, we will notify you of the actual Project Operation Date which will be the date on which the Utility grants permission to operate the Project.

We may, per the terms of this Agreement, adjust your Subscription Size to better reflect your expected annual electricity consumption and will notify you of any such adjustment.

* Under this Agreement, Nexamp may be referred to as “Provider”, “us”, “we”, or “our” and Customer may be referred to as “you” or “your”.

Executing this Community Solar Subscription Agreement and the Community Distributed Generation Disclosure Form (collectively, the “Agreement”), allows Nexamp to direct your Utility to allocate monetary credits from a Nexamp project to your electric Utility bill. The dollar amount of the credit you receive will be based on your Subscription Size as a portion of the Project’s electricity output (the “Credit”). In exchange for receiving this Credit on your Utility bill, you will pay us the Credit value less your Discount (the “Price”). For example, if your Subscription Size results in a Credit of \$100, you would receive a credit on your Utility bill of \$100 and you would owe Nexamp only \$90, which is a 10% savings to you.

In a given billing period, if your Subscription Size results in a Credit in excess of your Utility costs, such excess Credits will roll over to be applied towards future Utility costs; and, if your allocated Credit is less than your monthly electricity bill, you will owe the balance to the Utility.

In consideration of the mutual premises, representations, warranties, covenants and conditions herein, the Parties agree as follows.

1. **Term:** The term of this Agreement begins on the date you execute this Agreement (the “Effective Date”) and will continue, unless terminated earlier pursuant to the terms herein, through the date upon which the transactions for the final Credit delivery 25 years from the Project Operation Date are complete (the “Term”). Under this agreement, we will act as the “Sponsor” or “CDG Host”, and you will act as the “Community Solar Subscriber” or “CDG Satellite.”
2. **Early Termination:** This Agreement may be terminated prior to the end of the Term (the “Early Termination Date”) by:
 - a. You within three (3) business days after signing this contract or otherwise upon three (3) months prior written notice;
 - b. Nexamp, upon notice to you (i) at any time prior to the actual Project Operation Date, if we determine that developing the Project no longer feasible, (ii) if community solar is no longer available for the Project, or (iii) upon three (3) months prior written notice.

Upon early termination under this Section 2, each Party shall perform all obligations due to the other Party that arose prior to the Early Termination Date (including any transactions for the final Credit delivery) after which, the Parties shall have no further obligations hereunder, except those which survive this Agreement’s expiration or termination. You understand that, should excess Credits remain to be applied to your Utility Account at such a time when you terminate this Agreement, you may forfeit the entirety of such excess Credit as required by operation of Utility policies and applicable law.

3. **Sale and Purchase; Payment:**
 - a. We will invoice you for the Price each Utility billing period, and you agree to pay the invoices within 30 days of the invoice date.
 - b. You will automatically be enrolled in our autopay electronic billing program and are responsible for providing your payment information via our customer portal which can be accessed at cs.nexamp.com. At any time and without penalty to you, you may opt out of our autopay program via our portal or request to receive a paper invoice by sending a written notice to us.
4. **Delivery; Change of Account; Acknowledgments:**
 - a. To deliver the Credit to you, we will deliver the Project’s electricity to the Utility at the Project meter as the electricity is produced, from the actual Project Operation Date through the Term.
 - b. You understand:
 - i. that the Credit delivered to you in any particular billing period will be reflected on your Account statement according to the Utility’s billing cycle.
 - ii. that the Utility will meter and record the Project’s electricity production and will apply the Credit to your Utility Account according to our direction;
 - iii. the Utility will be solely responsible for calculating the value of the Credit applied to your Utility bill in accordance with applicable Utility tariffs and applicable law.
 - c. You may change your Utility Account for Credit delivery by written notice to us, provided that your new account is in the same Utility territory as the existing Account or is otherwise approved by us. The new account will take effect on the earliest available date upon which the Credit allocations may be changed with the Utility after our receipt of your notice. **(Please note that such a change may take up to 90 days.)**
 - d. You agree that you will not change your Service Classification unless you have requested in writing and received our approval.

5. **Title:**

- a. As between the Parties, we will claim and receive any and all tax, environmental or other credits, grants, subsidies, renewable energy credits, carbon offset credits, rebates or other benefits related to the Project or its output, and any other benefits or profits of owning the Project (including any capital appreciation), both presently and in the future. You will NOT have the option to buy any equipment of the Project at any time during or at the end of the Term.
- b. This Section shall survive Agreement termination.

6. **Assignment:**

- a. We may assign, sell or transfer the Project and/or the rights and obligations under this Agreement to any person without your consent including making collateral assignments for security purposes, and you hereby consent to the assignment, sale, or transfer of the Project to any lender or financing party (including agents acting on their behalf) and the collateral assignment of our right, title and interest in and to this Agreement as security for any financing incurred by us or our affiliates.
- b. You may not sell, transfer or assign this Agreement, either in whole or in part, or the Credits purchased under this Agreement, to anyone without our express written consent.

7. **Termination for Default.** You will be in default if you fail to make a monthly payment within 60 days of the invoice date. If you are in default, we may terminate this Agreement. If we terminate this Agreement, you may be charged the Price for Credits allocated to you through the end of the next occurring date upon which the Credit allocation may be changed with the Utility, plus an administrative fee (not to exceed \$250) for reasonable and documented costs paid by us to collect the amount owed by you. This Section shall not otherwise limit a Party's remedies at law or equity.

8. **Entire Agreement; Modifications in Writing; Survival:** This Agreement contains the Parties' entire agreement, and there are no other agreements between the Parties regarding the Project or the Credit, either written or oral. We reserve the right to amend this Agreement (including your Subscription Size to better reflect your expected annual electricity consumption or to designate a replacement Project) from time to time, provided however, that we cannot modify the Discount without your prior written approval. We will provide you with written notice of such modifications at least 90 days prior to the date such modifications become effective. Any delay or failure of a Party to enforce the obligations of the other Party under this Agreement shall not constitute a waiver of such obligations or a Party's right to enforce the same and shall not affect the validity of this Agreement. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved by arbitration and an arbitrator may reform the Agreement as the arbitrator deems just and equitable in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

9. **Governing Law:** This Agreement is governed by the law of the State of New York without giving effect to the principles of conflict of laws that would require the application of any other law.

10. **Notices:** All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing or to the email address provided by you, shall be deemed delivered five business days after it was mailed (except notice provided by email shall be deemed delivered when sent), and shall be sent by any of the following methods: first class mail; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the Parties' addresses stated on page 1.
11. **Limitation of Liability and Warranty Disclaimer:** TO THE MAXIMUM EXTENT PERMITTED BY LAW
- (A) (1) EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND WILL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO PROVIDER UNDER THIS AGREEMENT; AND (2) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. THIS AMOUNT OF LIABILITY IS EACH PARTY'S SOLE AND EXCLUSIVE REMEDY, AND EACH PARTY HEREBY WAIVES ALL OTHER REMEDIES OR DAMAGES AT LAW OR EQUITY; AND
- (B) EXCEPT AS EXPRESSLY PROVIDED HEREIN, PROVIDER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ITS OBLIGATIONS OR THE PROJECT. PROVIDER DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.
12. **Indemnification:** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY AND ITS SUCCESSORS AND ASSIGNEES, AND ITS AND THEIR EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS, FROM ANY AND ALL LOSSES, LIABILITIES, DAMAGES, CLAIMS, ACTIONS, COSTS, JUDGMENTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), PENALTIES, DEMANDS AND LIENS ASSERTED BY OR RESULTING FROM CLAIMS, ACTIONS, SUITS OR DEMANDS BY ANY THIRD PARTY, OF ANY KIND OR NATURE ARISING OUT OF, CONNECTED WITH, RELATING TO OR RESULTING FROM SUCH PARTY'S FAILURE TO COMPLY WITH ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
13. **Cooperation:** You agree to cooperate with us and the Utility as reasonably necessary to ensure this Agreement complies with community shared solar laws and regulations.
14. **Authorization to Receive Historical Consumption Information.** During the Term of this Agreement, you will need to provide your electric utility account information. This information is needed to determine the solar production required to offset your usage. You authorize Nexamp to request and review your historical electricity information from your local utility as long as you remain a customer under this Agreement. Your utility account information will not be shared with third parties. We reserve the right to update or adjust our utility data policy with notification if these changes impact you based on your contract or subscriber status. Our utility data policy can be found online at: <https://www.nexamp.com/privacy-policy>.
15. **Customer Status with Utility.** You hereby certify to us and permit us to confirm with the Utility that you are not already treated by the Utility as a net metered customer generator, a remote net metered host, or a CDG satellite account. You understand that your treatment under any of the foregoing will disqualify you from receiving Credits from us and shall permit us to immediately terminate this Agreement upon written notice.


16. **Customer's Rights:** You acknowledge that you are advised of your rights under New York's Home Energy Fair Practices Act (a summary of which can be found at http://www.dps.ny.gov/HEFPA_Brochure_12-08.pdf), and under the Uniform Business Practices for Distributed Energy Resources Suppliers (a summary of which can be found at <https://www.nyserda.ny.gov/-/media/A592A57FE72649FB88DD25E001CA803B.ashx>). You understand that if you have complaints about us or general questions, you may contact the Office of Consumer Services, New York State Public Service Commission, Empire State Plaza, Agency Building 3, Albany, NY 12223-1350, 1-800-342-3377.
17. **Customer Representations.** You hereby represent and warrant to us that (a) you have read and understand the terms of this Agreement and have had the opportunity to ask questions of us and to seek the advice of an attorney, if desired, (b) you are duly authorized to execute, deliver and perform this Agreement and such execution, delivery and performance does not violate any applicable law, (c) this agreement is your valid obligation and is enforceable against you in accordance with its terms, (d) your name is associated with the Utility Account and you have the full right, power and authority to enter into this Agreement, and (e) all information provided by you, including Utility and banking information, is accurate, true and complete in all respects.

Customer

By: 
Name: Town of Roseboom Supervisor

Date: 8/16/2019

Provider

By: 
Name: Allan Telio
SVP, Community Solar
Date: 8/16/2019