



Purchaser Credit Agreement

This Purchaser Credit Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Project Description:	Marlboro CSD RNM		
Purchaser:		Seller:	
Name and Address	Marlboro Central School District 21 Milton Turnpike, Suite 100 Milton, NY 12547 Attention: Michael Brooks, Superintendent	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(845) 236-5802	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	Michael.brooks@marlboroschools.org	E-mail	Contracts@solarcity.com

This Agreement sets forth the terms and conditions of a purchaser credit agreement in conjunction with the Solar Power Purchase Agreement between Seller and Purchaser related to the System at the Premises (the “**PPA**”). Capitalized terms not otherwise defined herein shall have the meanings given such terms in the PPA. The term of this Agreement shall be concurrent with the term of the PPA.

1. **Background.** In order to comply with Article 9 NYS Energy Law and applicable regulations, including but not limited to New York Code, Rules, and Regulations (NYCRR) §155.20, and for so long as Article 9 and its applicable regulations apply to the transactions contemplated by the power purchase agreement, the recommended solar developer(s) under the K-Solar program shall incorporate a tracking trigger mechanism to guarantee that the solar electric costs offered are less than Purchaser’s current prevailing kilowatt-hour price, not including demand or other fixed charges, purchased from the Utility. If Article 9 and its applicable regulations cease to apply to the PPA, then this Agreement shall automatically terminate effective as of the date on which such laws and regulations cease to apply.

2. **Savings Calculation.** Within sixty (60) days after the end of each six (6) consecutive calendar year period commencing on the Commercial Operation Date, Seller shall provide a calculation of the Generation Cost Differential for the immediately preceding six (6) consecutive year period as indicated below:

- 0 “**Generation Cost Differential**” means an amount equal to Purchaser’s cost of Utility electricity (per kWh) not including demand or other fixed charges, in a given six (6) consecutive year period minus the cost of electricity under the PPA (per kWh) for such period.
- 1 Purchaser shall notify Seller and provide reasonable evidence of Purchaser’s cost of Utility electricity for each six (6) consecutive year period.
- 2 If the Generation Cost Differential is greater than 0, then Purchaser shall accrue a billing debit in an amount equal to (a) the System’s actual kWh production for the relevant six (6) consecutive year period, multiplied by (b) the Generation Cost Differential for such year period (the “**Purchaser Debit**”).
- 3 If the Generation Cost Differential is less than 0, then Purchaser shall accrue a billing credit in an amount equal to (a) the System’s actual kWh production for the relevant six (6) consecutive year period, multiplied by (b) the Generation Cost Differential for such year period (the “**Purchaser Credit**”).

Any Purchaser Debit from a given period shall accumulate and carry over into succeeding periods and shall reduce any Purchaser Credit accruing in such periods until exhausted. If a cumulative Purchaser Credit remains at the end of the Term, then Seller shall either

continue to provide electricity generated by the System to Purchaser at no charge until the such time as the cumulative Purchaser Credit is fully utilized to offset amounts Purchaser would otherwise owe relative to its receipt of electricity from the System or Seller shall make payment of same to Purchaser within 30 days following the end of the Term.

3. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the address set forth above or such other address as either Party may specify in writing. Each Party shall deem a document sent by electronic mail to it as an original document.

4. **Applicable Law, Arbitration.** The laws of the state where the Facility is located shall govern this Purchaser Credit Agreement without giving effect to conflict of laws principles. All claims, disputes and other matters in question, arising out of, or relating to, this Purchaser Credit Agreement or the breach thereof shall be decided by binding arbitration. Any arbitration, including the selecting of the arbitrator will be administered by JAMS under its Commercial Arbitration Rules. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either party can initiate an arbitration proceeding by filing the necessary forms with JAMS. Venue for any arbitration brought under this Purchaser Credit Agreement shall be proper in the State of New York. Each party shall bear its own costs and expenses, including attorneys' fees, with respect to any arbitration. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Purchaser Credit Agreement or to make any award that would extend to any transaction other than this Purchaser Credit Agreement.

5. **Assignment and Transfer of this Agreement.** Seller may assign its rights or obligations under this Purchaser Credit Agreement to a third party without your consent, provided that any assignment of Seller's obligations under this Agreement shall be to a party qualified to perform such obligation. If Seller assigns this Agreement and does not assign the PPA to the same assignee, then Seller is deemed to have elected to settle a cumulative Purchaser Credit, if any, by providing a payment of same amount. If Seller assigns this Agreement and the PPA to the same assignee, then Seller may settle a cumulative Purchase Credit, if any, by providing a payment of same amount or by providing electricity from the system at no charge. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser assigns the PPA in accordance with the PPA.

6. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

7. **Further Assurances.** Each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signature Page to Follow]

Marlboro Central School District

SolarCity Corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____