

# **ATTACHMENT H**

## **Terms of Service**

## SunShare's Minnesota Community Solar Terms of Service

1. **Parties.** This is a Community Solar Services Agreement between SunShare, LLC, a Colorado limited liability company, (herein "Company") and you, the retail electric service customer of Northern States Power Company, a subsidiary of Xcel Energy (herein "Xcel Energy") identified on the cover page of this Agreement ("you"). For convenience, references to Company include the words "we", "us", and "our." References to you include the word "Customer." References to this Community Solar Services Agreement include the words "this Agreement."
2. **The Community Solar Garden.** As indicated on the cover page to this Agreement, the Community Solar Garden applicable to this Agreement ("Solar Garden") is either set forth on the cover page of this Agreement or will be designated by us in the future upon the allocation of your subscription hereunder to the Solar Garden. Minnesota Statute §216B.1641 allows you to own a portion of the solar energy produced from the Solar Garden(s) and attribute your share of solar energy to one or more of your metered premises.
3. **Customer Eligibility.** We refer to the subscriber premises covered by this agreement as your subscriber "Location" or "Locations." You agree that the following statements that establish your eligibility to purchase this subscription are true and complete, and you agree to notify us promptly if any of these statements ceases to be true:
  - a. The Xcel Energy service account number for each subscriber Location is accurate as stated on the cover page of this Agreement (and related attachments, if any), and the name of the customer of record is identical to your name as stated on same.
  - b. Your Location(s) are within Xcel Energy's Minnesota service territory and within or adjacent to a county listed above in
  - c. Section 3, The Community Solar Garden.
4. In addition, you acknowledge that, to be eligible to enter this Agreement, you must first satisfy our credit requirements, which are subject to change and not contained in this Agreement.
5. We, our affiliates, successors, assigns, and/or Xcel Energy may use your utility usage data to confirm your subscribed Production Capacity is not more than forty percent (40%) of the nameplate capacity of any given Solar Garden(s) included under this Agreement, and is not expected to generate more than one-hundred-and-twenty percent (120%) of your historical annual electricity consumption as defined by Xcel Energy (your "Subscription Cap(s)") at the time of this Agreement.
6. **Bill Credits.** Xcel Energy is responsible for accepting deliveries of your Solar Energy, and for providing you with a Bill Credit in dollars for your Solar Energy on your retail electric service bill. The amount of your Bill Credit is based on a 25-year utility Bill Credit rate, as established and regulated by the Minnesota Public Utilities Commission ("MPUC") and as currently set forth in Xcel Energy's MN Rate Book at Section 9 (substantially similar to [Attachment E, Xcel/Customer Tariff](#)).
7. **Solar Renewable Energy Credits.** Our contract with Xcel Energy allows us to sell the Solar Renewable Energy Credits ("sRECs") associated with the Solar Garden(s) to Xcel Energy in exchange for a \$0.02/kWh increase to your Bill Credit (for solar gardens larger than 250 kilowatts). There may be additional, non-power related benefits associated with your Production Capacity, such as environmental, tax, or future benefits. You agree that we or our designee is entitled to receive, hold, dispose of and exercise those benefits, and that you have no ownership interest in any sRECs or other such benefits. If we need you to sign any additional documents to evidence our agreement relating to your sRECs and any other benefits that may be associated with your Production Capacity or Solar Energy, you agree to do so at our request.

8. **Insurance.** We will insure the Solar Garden(s) during the Term of this Agreement in accordance with our contract with Xcel Energy and applicable law, regulations, and tariffs. (The 2015 Xcel Energy coverage requirement is \$2 million per occurrence.) You are not responsible for insuring any aspect of the Solar Garden.
9. **Information Disclosures.** You agree that we are authorized to provide specific and limited information related to your subscription or your participation in the Solar Garden(s) that may be required by Xcel Energy, the MPUC, the Minnesota Department of Commerce, or the Minnesota Office of Attorney General. You agree to complete and execute any forms necessary to effect said authorization.
10. **Taxes.** Under Minnesota law, we may be required to pay a Solar Energy Production Tax on the solar energy produced by your Production Capacity in the Solar Garden(s). Your Subscriber Payment(s) support the payment of this tax and other Taxes currently applicable to the Solar Garden(s) for the life of the project. If a new or increased federal, state, or local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, or transaction tax, or other taxes, regulatory fees, surcharges, or other similar charge (collectively, "**New Tax**") is imposed upon the Solar Garden(s), we reserve the right to assess you in proportion to your Monthly Subscriber Payments to cover the New Tax.
11. **Related Agreements.** In addition to the obligations set out in this Agreement, we also have obligations under the related agreements described in Sections 14 and 15, directly below.
12. **Solar\*Rewards Community Agreement.** We will enter into an agreement with Xcel Energy substantially similar to **Attachment F**, *Xcel/Developer Tariff*, under which we and Xcel Energy will take the following actions in the implementation of the Solar Garden:
  - a. **Our Responsibilities.** We are responsible for operating and maintaining the Solar Garden(s) in good working order so that it produces solar energy; for notifying Xcel Energy within 30 calendar days after any planned or unplanned outages; for promptly repairing or replacing any damaged or destroyed equipment; for delivering and selling the solar energy and the associated sRECs to Xcel Energy; for providing Xcel Energy with current information that identifies you, your Production Capacity, and your Solar Energy; and for sending you a monthly invoice for your Solar Energy payable directly to us or our designee.
  - b. **Xcel Energy's Responsibilities.** Xcel Energy is responsible for accepting delivery of your Solar Energy and any related sRECs, and for providing bill-credit payments for your Solar Energy on your retail electric service bill (your "**Bill Credit**") according to the MPUC-approved Solar\*Rewards Community Program tariff.
13. **Required Agency Agreements.** You agree to complete and execute Xcel Energy's Customer Consent Form ("**Customer Consent Form**") substantially similar to **Attachment C**, as necessary to authorize Xcel Energy to share relevant information with us about your electricity use. You also agree to complete and execute a Solar\*Rewards Community Subscriber Agency Agreement and Consent Form ("**Agency Agreement**") substantially similar to **Attachment D**, as necessary to authorize us to act as your agent for purposes of carrying out this Agreement and enable us to process changes requested under Section 16, *Changes In Your Participation*. If, in order to effectuate any part of this Agreement, a new Customer Consent Form or Agency Agreement must be executed, you agree to execute said required agency agreement(s) without delay.
  - a. **Reallocation of Production Capacity; Oversubscription.**
    - i. **Reallocation of Production Capacity.** To enable ongoing subscriber balancing across solar gardens, we reserve the right, at our option and in our sole discretion, to allocate or reallocate all or a portion of your Production Capacity among one or more solar gardens without notice ("**Reallocated Capacity**"), so long as it does not reduce your effective Bill Credit rate or other material benefits due to you under this Agreement. You hereby consent to us assigning rights to Reallocated Capacity to another entity if necessary to enable such reallocation.
    - ii. **Oversubscription.** If total subscriptions exceed the Solar Garden(s) nameplate capacity, or if we are otherwise commercially or physically unable to meet the

Production Capacity set forth in this Agreement (all such circumstances, an "Oversubscription"), we may, at our discretion, defer all or a portion of your requested Production Capacity to a currently existing or future Solar Garden(s) for which you would be an eligible subscriber, if and when capacity from such a project becomes available.

- b. You agree that we have the authority to modify the non-price terms on the cover page of this Agreement or the Agency Agreement as may be necessary to effectuate or reflect the details of said reallocation or oversubscription and we agree to provide you a copy of the Agreement if so revised.

**14. Mutual Acknowledgements.** We agree that, regardless of any other provisions to the contrary, under this Agreement:

- a. We will sell the Solar Energy generated by your Production Capacity, along with the associated sRECs if relevant, to Xcel Energy as your agent under Section 15, *Required Agency Agreements*.
- b. Your purchase of Community Solar subscriber benefits under this Agreement, including the Bill Credits related to your Solar Energy, will be treated as a service contract under Internal Revenue Code Section 7701(e), and its various subparts.
- c. You do not, by virtue of this Agreement, have the right to "operate" the Solar Garden(s), as that term is used in Section 7701(e)(4)(A) of said code.
- d. Neither you nor a "related entity" will bear "any significant financial burden if there is nonperformance" by us
- e. under this Agreement, as those phrases are used in Section 7701(e)(4)(A) of said code.

**15.** We agree that all tax returns, information statements, reporting requirements, and other filings made by either of us will be made so that they comply with the mutual acknowledgements described in paragraphs (A) through (D) above, unless the law in effect at the time requires either of us to do otherwise.

**16. Lender Conditions.** You understand that we or our affiliate may finance or capitalize the acquisition, development, installation, operation, and/or maintenance of the Solar Garden(s) with loans, financing, or other accommodations from one or more lenders or financial institutions ("Lender").

**17.** You acknowledge and agree that:

- a. Your eligibility for this Agreement is subject to final Lender approval, and we have no obligation to perform this Agreement absent said Lender approval;
- b. You agree that our obligations to the Lender may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first priority security interest in the Solar Garden(s) (collectively, the "Lender's Security Interest"); in order to facilitate this financing, you consent to our granting to Lender the Lender's Security Interest;
- c. You and all of your rights under this Agreement are and will be subject and subordinate to the Lender's Security Interest (and as later modified by any and all renewals, modifications, supplement, amendments, consolidations, replacements, substitutions, additions, and extensions); and
- d. No amendment or modification of this Agreement is permitted without the Lender's prior written consent, with the exception of our approval of a change in your participation under this Agreement as set out in Section 16, *Changes in Your Participation*.

**18. Assignment.** We may assign this Agreement along with all of our rights and obligations to any affiliate or third party without notice, for any purpose, including in the event of an acquisition, corporate reorganization, merger, or sale of its assets to another entity. You will not assign this Agreement without our consent unless permitted and in compliance with Section 16, *Changes in Your Participation*.

**19. Lender's Default Rights.** If we default under our financing documents with our Lender, the following provisions apply:

- a. The Lender, through its security interest, will be entitled to exercise any of our rights and remedies under this Agreement. The Lender will also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Solar Garden.
- b. The Lender will have the right, but not the obligation, to pay all sums due from us under this Agreement and to perform any other act, duty, or obligation required of us, and to cure a Company Default (defined below) in the time and manner provided by the terms of this Agreement. Nothing requires the Lender to cure a Company Default or perform any act, duty, or obligation of ours under this Agreement, unless the Lender has succeeded to our rights under this Agreement, but Customer hereby gives Lender the option to do so.
- c. If the Lender exercises its remedies under the Lender's Security Interest in the Solar Garden, including any sale by the Lender, whether by judicial proceeding or under any power of sale, or any conveyance from us to Lender (or its assignee) in lieu of a sale, the Lender will give you notice of the transfer or assignment of this Agreement. If Lender exercises these remedies, it will not constitute a default under this Agreement, and will not require your consent. No such transfer for assignment under this Provision shall cause a material change to the terms of this Agreement.
- d. Upon any rejection or other termination of this Agreement under any process undertaken with respect to us under the United States Bankruptcy Code, you agree to enter into a new agreement with Lender or its assignee under substantially the same terms as this Agreement, including the effective Term under Section 2 (*Effective Date; Term*) if Lender requests you to do so within ninety (90) days of the termination or rejection of this Agreement.
- e. At our request, you agree to deliver to Lender and us a fully executed Acknowledgement and Confirmation to Lender in the form of [Attachment B](#) to this Agreement, in which you acknowledge and confirm that the legal and full ownership of the Solar Garden(s) remains with us, or our affiliate, and that the Solar Garden(s) is our, or our affiliate's, property.

**20. Customer Default.** The following events will constitute an event of breach or default on your part (a "Customer Default"):

- a. Except as otherwise expressly permitted in this Agreement, you terminate this Agreement before the end of the Term;
- b. You are in breach of any written representation or warranty, or fail to perform any material obligation set forth in this Agreement, including failure to pay any amount when due under this Agreement, unless your breach or failure is cured within thirty (30) days after you receive written notice from us; or
- c. You admit in writing your insolvency, assign your assets for the benefit of creditors, enter any bankruptcy or reorganization proceeding (either voluntary or involuntary), are otherwise adjudicated bankrupt or insolvent, or have all or substantially all of your assets subject to attachment, execution, or other judicial seizure; or any similar event occurs.
- d. You attempt to claim any sRECs or other non-energy benefits in connection with the Solar Energy that conflict with the terms of this agreement.

**21. Our Remedies in Case of Your Default.** If you are in default under this Agreement, we may use any remedy available to us in this Agreement or by law, including by taking one or more of the following actions at our option and in our discretion:

- a. Stop delivery of your Subscriber Bill Credits until such default is remedied;
- b. Cancel this Agreement, resulting in termination of said credits;
- c. Recover from you (i) the Early Termination Fee (see Section 16.D, *Arbitrary Exit*) plus (ii) any late charges, penalties, interest, taxes, or other sums then accrued or due and owing to us; and
- d. Petition a court of law to recover damages for your default (including without limitation our court costs, reasonable

- e. attorneys' fees, and other actual expenses relating to your default).
22. You agree that, upon cancellation of the Agreement under the terms set forth herein, your Production Capacity and related subscriber Bill Credits, sRECs, and other non-energy benefits will automatically assign back to us, so that we may offer it to other potential subscribers. You agree to cooperate with us if necessary to preserve our right to said capacity and benefits.
23. **Company Default.** The following events will constitute a breach or default on our part ("Company Default"):
- a. Except as otherwise expressly permitted in this Agreement, we terminate this Agreement before the end of the Term;
  - b. We are in breach of any representation or warranty, or fail to perform any material obligation as set forth in this Agreement and our breach or failure is not cured within sixty (60) days after written notice from you; and
  - c. We admit in writing our insolvency, assign our assets for the benefit of creditors, enter any bankruptcy or reorganization proceeding (either voluntary or involuntary), are otherwise adjudicated bankrupt or insolvent, have all or substantially all of our assets subject to attachment, execution, or other judicial seizure; or any similar event occurs.
24. **Lender's Right to Cure.** Regardless of any contrary term in this Agreement:
- a. You will not terminate or suspend this Agreement unless you have given the Lender prior written notice of your intent to do so with a description of the event giving rise to the alleged Company Default, and provide the Lender with the opportunity to cure the Company Default within sixty (60) days after such notice or any longer period provided for in this Agreement. If the Company Default reasonably cannot be cured by the Lender within the period established under this Agreement and the Lender commences and continuously pursues cure of such Company Default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional thirty (30) days. Our obligations will otherwise remain in effect during the cure period.
  - b. If the Lender or its lawful assignee (including any buyer or transferee) acquires title to or control of our assets and within the applicable time periods cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement, then the Lender and/or its assignee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.
  - c. At the request of Lender and/or its assignee, you agree to execute and deliver any document, instrument, or statement (but not including any payment) required by law or otherwise as reasonably requested by Lender or its assignee in order to create, perfect, continue, or terminate the security interest in favor of Lender, and to secure the obligations evidenced by Lender's Security Interest.
25. **Your Remedies in Case of Company Default.** If we are in default and such Company Default results in the failure or inability of the Solar Garden(s) to produce Solar Energy for a period of one hundred and eighty (180) consecutive days, you may terminate this Agreement upon written notice to us without further obligation.
26. **Company Indemnity; Restriction on Customer Liens.** Subject to the limitations contained in Section 27 directly below, we agree to indemnify, defend, and hold you harmless from and against any damages or losses directly attributable to a material breach of our obligations under this Agreement that are found to be due to our gross negligence or willful misconduct. The Solar Garden(s) will not be subject to any lien, security interest, claim, mortgage, or deed of trust that may be imposed on or assessed through you or against any property belonging to you.
27. **Limitations of Liability.** Except for our indemnity obligations under Section 26 directly above, with respect to third party claims, we will not be liable to you for general, special, punitive, exemplary, indirect, incidental, or consequential damages arising from or out of this Agreement. Our total liability to you under this Agreement will in no event exceed the aggregate of all payments made by you under this Agreement during the preceding 12 months. That amount will be your sole and exclusive remedy and all other

remedies or damages at law or equity are waived. We are not responsible for any consequential, incidental, punitive, exemplary or indirect damages, lost profits or losses relating to this Agreement, in tort or contract, including any negligence or otherwise. **EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE SOLAR GARDEN(S) OR OUR OBLIGATIONS UNDER THIS AGREEMENT. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**

28. **Force Majeure.** If we are unable to perform all or some of our obligations under this Agreement because of a Force Majeure Event, we will be excused from whatever performance is affected by the Force Majeure Event, provided that: (a) as soon as is reasonably practical, we provide you with notice describing the Force Majeure Event; (b) the suspension of our obligations is limited to the scope and the duration required by the Force Majeure Event; and (c) no obligation of ours that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event will be excused as a result of such Force Majeure Event.
29. "Force Majeure Event" means any event, condition, or circumstance beyond our control and not caused by our fault or negligence. It will include, without limitation, failure or interruption of the production, delivery, or acceptance of electricity due to: an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tornado; hail; volcanic activity; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; the binding order of any governmental authority (provided such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, power or voltage surge caused by someone other than us, including a grid supply voltage outside of the standard range specified by the utility's equipment or products (but not to the extent that any such availability of any of the foregoing results from our failure to have exercised reasonable diligence); and failure of equipment not utilized by us or under our control.
30. **Termination Upon Force Majeure.** If we are prevented from performing under this Agreement by reason of Force Majeure for a continuous period of three hundred sixty-five (365) calendar days during the Term, then either Party may terminate this Agreement, without liability on either of our parts to the other, upon thirty (30) days written notice. In no event shall a Force Majeure Event excuse a party from the payment of money due, or from the performance of its indemnity obligations under this Agreement.
31. **Dispute Resolution.** Each of us agrees that to expedite and control the costs of disputes, the resolution of any dispute
32. between us relating to this Agreement ("Dispute") will be resolved according to the following procedures:
- Unless otherwise agreed in writing, we agree to continue to perform each of our respective obligations under this Agreement during the course of the resolution of the Dispute.
  - Each of us agrees to first try to resolve any Dispute jointly and informally within thirty (30) days after one party has notified the other in writing of the Dispute.
33. **Governing Law, Jurisdiction, and Venue.** The laws of the State of Minnesota govern all matters arising out of or relating to this agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, validity, performance, and enforcement. A party bringing a legal action or proceeding against the other party arising out of or relating to this agreement or the transactions it contemplates must do so in a court of the State of Colorado or the State of Minnesota; both parties hereby consent to said jurisdiction.
34. **Legal Notices.** All required notices and communications under to this Agreement, will be in writing and will be deemed given if sent by nationally recognized overnight courier or mailed by registered or certified mail (return-receipt requested) to the address listed on the cover page of this Agreement, or to such other address as the Party to whom notice is to be given may have furnished to the other Party in writing. Each party agrees to service of process by registered or certified mail, return receipt requested.
35. **Miscellaneous.**
- Authority.** You have the full power and authority to execute and deliver this Agreement and

to perform your obligations hereunder. Your execution and performance of this Agreement and of your obligations under this Agreement have been duly authorized by all necessary action.

- b. **Binding Effect**. This Agreement will be binding upon and inure to the benefit of each of us, and to our successors and permitted assigns, but nothing in this Agreement, express or implied, is intended to confer or will confer upon any other entity or person any benefits, rights, or remedies except as expressly set forth in this Agreement.
- c. **Entire Agreement; Amendment; No Waiver**. This Agreement, plus the Attachments referenced herein, contains the entire agreement and understanding between us concerning this agreement and supersedes any prior or contemporaneous agreement, either written or verbal. Any changes or amendments to, or waivers of, any provisions of this Agreement will only be effective if they are in writing and signed by both of us. No waiver by any party of any of the provisions hereof shall be effective unless set forth in writing and signed by the party so waiving. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed, which will include without limitation the obligation to make payments.
- d. **Counterparts**. This Agreement may be signed in counterparts, each of which shall constitute an original, and shall become operational when each of us has signed and delivered said counterpart to the other party, for example by facsimile or other electronic transmission.
- e. **Pricing**. The pricing offered in this Agreement is valid for 30 days after the date your contract is created. If you fail to sign this Agreement and return it to us within 30 days, we reserve the right to reject it unless you agree to our then-current pricing.