

**ATTACHMENTS TO SUNSHARE SOLAR  
SERVICES AGREEMENT VERSION 3.4.21**

# **ATTACHMENT A**

## **Community Solar Garden Price Schedule**

# ATTACHMENT A

## Community Solar Garden Price Schedule

Year	Estimated Kilowatt Hours Produced	Projected SunShare SSA Rate	Estimated Payments to SunShare
Year 1 after the Commercial Operation Date of the Solar Garden ("COD")	7800	\$0.07008	\$546.62
Year 2 after COD	7761	\$0.07648	\$593.57
Year 3 after COD	7722	\$0.07763	\$599.46
Year 4 after COD	7684	\$0.07879	\$605.41
Year 5 after COD	7645	\$0.07998	\$611.42
Year 6 after COD	7607	\$0.08117	\$617.49
Year 7 after COD	7569	\$0.08239	\$623.62
Year 8 after COD	7531	\$0.08363	\$629.81
Year 9 after COD	7493	\$0.08488	\$636.06
Year 10 after COD	7456	\$0.08616	\$642.37
Year 11 after COD	7419	\$0.08745	\$648.75
Year 12 after COD	7382	\$0.08876	\$655.19
Year 13 after COD	7345	\$0.09009	\$661.69
Year 14 after COD	7308	\$0.09144	\$668.26
Year 15 after COD	7271	\$0.09281	\$674.89
Year 16 after COD	7235	\$0.09421	\$681.59
Year 17 after COD	7199	\$0.09562	\$688.35
Year 18 after COD	7163	\$0.09705	\$695.19
Year 19 after COD	7127	\$0.09851	\$702.09
Year 20 after COD	7091	\$0.09999	\$709.05

THE SCHEDULE ABOVE IS THE 20-YEAR PRICE SCHEDULE BASED ON ESTIMATED PRODUCTION AMOUNTS FOR AN AVERAGE COLORADO HOME AND NOT SPECIFIC TO A PARTICULAR SOLAR GARDEN. THE YEAR 1 ESTIMATED PRICE PER KWH IS BASED ON A RESIDENTIAL BILL CREDIT RATE OF \$0.07008. THE YEAR 2 SUNSHARE RATE IS BASED ON THE YEAR 1 BILL CREDIT RATE, PLUS AN ESTIMATED 2% INCREASE, AND AN ADDITIONAL \$0.005. THE TERM OF THIS AGREEMENT MAY BE FOR LESS THAN 20 YEARS AS FURTHER DESCRIBED IN SECTION 2. THE ESTIMATED ANNUAL PRODUCTION (KWH) AND ESTIMATED PAYMENT AMOUNTS ABOVE ARE ESTIMATES ONLY. YOUR ACTUAL PAYMENT WILL DEPEND ON THE ACTUAL PRODUCTION (KWH) OF SOLAR ENERGY FROM THE SOLAR GARDEN IN WHICH YOU ARE SUBSCRIBED AND YOUR PRODUCTION CAPACITY. THIS AGREEMENT INCLUDES LIMITATIONS ON YOUR ABILITY TO CANCEL DURING ITS TERM. THE BILL CREDIT YOU RECEIVE FROM XCEL ENERGY DURING THE TERM MAY INCREASE OR DECREASE IN THE FUTURE BASED ON XCEL ENERGY'S ELECTRIC RATES. BEGINNING IN YEAR 3, THE PRICE YOU PAY UNDER THIS AGREEMENT WILL NOT BE IMPACTED BY XCEL ENERGY'S ELECTRIC RATES.

# **ATTACHMENT B**

## **Acknowledgement and Confirmation to Lender**

# Attachment B

## Acknowledgment and Confirmation to Lender

This Acknowledgement and Confirmation to Lender, dated as of \_\_\_\_\_ (this "Acknowledgement"), is made by \_\_\_\_\_ ("Customer") under that certain Solar Services Agreement dated \_\_\_\_\_ (the "SSA") with SunShare, LLC. This Acknowledgement is provided pursuant to the SSA to a lender to the project ("Lender"), which is providing financial accommodations to SunShare or one of its affiliates (for purposes of this Acknowledgement, "SunShare" refers to either SunShare, LLC, or an affiliate of SunShare, LLC). The solar photovoltaic system (the "Solar Garden") will be installed, operated, and maintained by SunShare pursuant to the SSA. The Solar Garden is located at SunShare's facility as described in the SSA.

### 1. Acknowledgement of Collateral Assignment.

- (a) Customer acknowledges the collateral assignment by SunShare to Lender, of SunShare's right, title, and interest in, to, and under the SSA, as provided in the SSA.
- (b) Lender, as the assignee of collateral, is entitled to exercise any and all rights of lenders generally with respect to SunShare's interests in the SSA, including those rights provided to Lender in the SSA.
- (c) Customer acknowledges that it has been advised that SunShare has granted a first priority security interest in the Solar Garden to Lender and that Lender has relied upon the characterization of the Solar Garden as personal property, as agreed in the SSA in accepting such security interest as collateral for its financial accommodations to SunShare.
- (d) Until further written notice, Customer agrees to make all payments due SunShare under the SSA to Lender, and to provide any notices to Lender at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Reference: \_\_\_\_\_

Account Number: \_\_\_\_\_

### 2. Confirmation. Customer confirms the following matters for the benefit of Lender:

- (a) To Customer's knowledge, there exists no event or condition that constitutes a default, or that would, with the giving of notice or lapse of time, constitute an event of default, under the CSSA.
- (b) Customer is not aware of any existing lease, mortgage, security interest, or other interest in or lien which could attach to the Solar Garden an interest adverse to Lender's security interest therein.

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

By: \_\_\_\_\_

Customer (printed name)

# **ATTACHMENT C**

**Xcel Energy's Customer Consent Form**



## CONSENT TO DISCLOSE UTILITY CUSTOMER DATA

All requested information must be provided for the consent to be valid. This form may be available in other languages. To obtain a copy in another language, please contact [inquire@xcelenergy.com](mailto:inquire@xcelenergy.com). Para obtener una copia de este formulario en español, por favor contacte a su proveedor de servicios públicos.

Utility Name and Contact: **Xcel Energy Correspondence Department**

Physical and Mailing Address: **P.O. Box 8, Eau Claire, WI, 54702**

Phone: **800.895.4999** Email: **datarequest@xcelenergy.com** Fax: **866.208.8732**

For additional information, including the utility's privacy policy, visit [xcelenergy.com](http://xcelenergy.com).

### To be completed by the Data Recipient

By signing this form, you allow your utility to give the following information to:

Organization/Trade Name: **SunShare LLC**

Contact Name (if available):

Physical and Mailing Address:

Phone: Email: Fax:

This organization will receive the following customer data:

☐ Information from your meter collected by your utility services provider from the following services (check all services that apply):

☒ electric ☐ steam ☐ natural gas

☒ Information regarding your participation in renewable energy, demand-side management, load management, energy efficiency or other utility programs

☐ Other (specify)

This information will be used to:

☒ Provide you with products or services you requested

☒ Offer you products or services that may be of interest to you

☒ Determine your eligibility for an energy program

☒ Analyze your energy usage

☐ Other (specify)

### DATA COLLECTION PERIOD

The relevant timeframe associated with the requested data is as follows:

☐ for the period beginning / / and ending / / OR

☒ for the period beginning / / and effective until terminated by me in writing.

You may terminate this consent at any time by sending a written request with your name and service address to your utility.

To be completed by the Data Recipient

To be completed by the Customer

To be completed by the Customer

CUSTOMER DISCLOSURES

\*\*\*Customer data can provide insight into activities within the premises receiving utility service. Your utility may not disclose your customer data except (1) if you authorize the disclosure, (2) to contracted agents that perform services on behalf of the utility, or (3) as otherwise permitted or required by laws or regulations.\*\*\*

\*\*\*You are not required to authorize the disclosure of your customer data. Not authorizing disclosure will not affect your utility services.\*\*\*

\*\*\*You may access your standard customer data from your utility without any additional charge.\*\*\*

\*\*\*Your utility will have no control over the data disclosed pursuant to this consent, and will not be responsible for monitoring or taking any steps to ensure that the data recipient maintains the confidentiality of the data or uses the data as authorized by you. Please be advised that you may not be able to control the use or misuse of your data once it has been released.\*\*\*

\*\*\*In addition to the customer data described above, the data recipient may also receive the following from your utility: your name; account number; service number; meter number; utility type; service address; premise number; premise description; meter read date(s); number of days in the billing period; utility invoice date; base rate bill amount; other charges including base rate and non-base rate adjustments; taxes; and invoice total amount. Your utility will not provide any other information, including personally identifiable information, such as your Social Security Number or any financial account number, to the data recipient through this consent form.\*\*\*

PLEASE READ THE CUSTOMER DISCLOSURES ABOVE

By signing this form you acknowledge and agree that you are the customer of record for this account and that you authorize your utility service provider to disclose your customer data as specified in this form.

CUSTOMER ACCOUNT NUMBER

SERVICE ADDRESS

PRINTED NAME

SIGNATURE OF CUSTOMER OF RECORD

DATE SIGNED



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## **ATTACHMENT D**

### **Solar\*Rewards Community Subscriber Agency Agreement and Consent Form**

**SRC SUBSCRIBER AGENCY AGREEMENT  
FOR XCEL ENERGY SOLAR\*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: \_\_\_\_\_

SRC Subscriber Retail Customer Account No.: \_\_\_\_\_

SRC Subscriber Service Address: \_\_\_\_\_  
\_\_\_\_\_

SRC Subscriber E-mail Address: \_\_\_\_\_

SRC Subscriber Mailing Address: \_\_\_\_\_

SRC Subscriber Telephone No: \_\_\_\_\_(Primary) \_\_\_\_\_(Alt.)

SRC Producer (Subscriber Organization) Name: \_\_\_\_\_

Solar Garden ID No: \_\_\_\_\_

Name and Location of Solar Garden: \_\_\_\_\_  
\_\_\_\_\_

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_ kW

The undersigned SRC Subscriber hereby authorizes \_\_\_\_\_ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar\*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's

execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (b) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

# **ATTACHMENT E**

**Xcel Energy's CO Rate Book  
Solar\*Rewards Community Service**

PUBLIC SERVICE COMPANY OF COLORADO

P.O. Box 840  
Denver, CO 80201-0840Original  
Colo. PUC No. 8 Cancels  
Colo. PUC No. 7Sheet No. 114  
Cancels  
Sheet No.

ELECTRIC RATES	RATE
SOLAR REWARDS COMMUNITY SERVICE	
SCHEDULE SRCS	
<p><u>APPLICABILITY</u></p> <p>Applicable as an option to Residential, Commercial and Industrial Customers who are Solar Rewards Community Subscribers (SRCS Subscribers) that receive an SRC Allocation of photovoltaic energy for a Company approved Solar Rewards Community Producer (SRCS Producer). Not applicable to street lighting, area lighting, or resale service. Customers receiving photovoltaic service under Schedule PV may also be SRCS Subscribers.</p> <p><u>DEFINITIONS</u></p> <p><u>Base Energy Rate with GRSA (BER)</u></p> <p>With the exception of the first Year of implementation, the Base Energy Rate with GRSA shall be the Base Energy Rate times 1 + GRSA in effect as of January 1st of each Year. In the first Year of implementation, the Base Energy Rate with GRSA shall be the Base Energy Rate times 1 + GRSA in effect as of July 1, 2012.</p> <p><u>Electric Commodity Adjustment Component (ECA Component)</u></p> <p>The ECA Component is the estimated annual average Electric Commodity Adjustment (ECA) rate or the annual weighted average ECA rate as applicable to each Customer as filed annually on November 1 by the Company in its Annual ECA Projection.</p> <p><u>Premise</u></p> <p>A Premise for billing purposes, including Solar Rewards Community Service shares, is service to a single premise through a single meter, except in instances where the Company combines meters for billing purposes.</p> <p><u>Service Period</u></p> <p>The service period applicable to a SRCS Subscriber shall be the service period under the applicable rate schedule that the subscriber receives electric service from the Company.</p> <p>(Continued on Sheet No. 114A)</p>	

ADVICE LETTER  
NUMBER 1728 Amended

DECISION/  
PROCEEDING  
NUMBER \_\_\_\_\_

REGIONAL VICE PRESIDENT,  
Rates & Regulatory Affairs

ISSUE  
DATE December 1, 2016

EFFECTIVE  
DATE January 1, 2017

PUBLIC SERVICE COMPANY OF COLORADO

P.O. Box 840  
Denver, CO 80201-0840Original  
Colo. PUC No. 8 Cancels  
Colo. PUC No. 7Sheet No. 114ACancels  
Sheet No. \_\_\_\_\_

ELECTRIC RATES	RATE
SOLAR REWARDS COMMUNITY SERVICE	
SCHEDULE SRCS	
<p><u>DEFINITIONS</u> – Cont'd</p> <p><u>SRCS Allocation</u> An Allocation is the Monthly allocation of photovoltaic energy that the SRC Producers determine for a SRCS Subscriber that the Company converts to Kilowatt-Hours for each billing Month.</p> <p>The Kilowatt-Hour SRCS Allocation is determined from the Monthly meter measurement of the SRCS Producer's photovoltaic energy production as measured and recorded by the Company. The Company shall use the SRCS Allocation for each SRCS Subscriber to determine the Monthly SRCS Credit.</p> <p>The Kilowatt-Hour SRCS Allocations plus production from photovoltaic service under Rate Schedule PV cannot exceed one-hundred-twenty percent (120%) of a SRCS Subscriber's average Monthly Kilowatt-Hour energy usage based on the Subscriber's previous twelve (12) consecutive Month period.</p> <p>Any SRCS Allocations, in combination with production from photovoltaic service under Rate Schedule PV, which exceeds one-hundred-twenty percent (120%) of a SRCS Subscriber's annual energy usage, shall not be included in the SRCS Credit.</p> <p>The Subscriber must be in the same county or qualified under criteria otherwise determined by the Company, to be deemed eligible subscribers. SRCS Allocations may be transferred between eligible subscribers with sixty (60) days' notice and up to three transfers per calendar Year. New SRCS Subscriptions resulting from SRCS Allocation transfers are subject to the same one-hundred-twenty percent (120%) rule.</p> <p>In the event the production from SRCS Producer is reduced due to weather or equipment failure, or other cause, the resulting Monthly SRCS Credit, which is determined from actual meter readings, will likewise be reduced.</p> <p><u>SRCS Producer</u> A Company approved Solar Rewards Community photovoltaic energy Producer. The SRCS Producers shall provide the SRCS Allocations of photovoltaic energy for each SRCS Subscriber.</p> <p>(Continued on Sheet No. 114B)</p>	

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Sheet No. 114B

Cancels  
Sheet No. \_\_\_\_\_

ELECTRIC RATES	RATE
SOLAR REWARDS COMMUNITY SERVICE	
SCHEDULE SRCS	
<p><u>DEFINITIONS</u> – Cont’d</p> <p><u>SRCS Resource</u> A Solar*Rewards Community Service photovoltaic resource that is identified as a unique project with a separate interconnection wholly within the Company’s service territory.</p> <p><u>Solar Rewards Community Service (SRCS) Credit</u> The Kilowatt-Hour credit to Customers per Kilowatt-Hour produced from a Customer’s SRCS Allocations, calculated on a Monthly basis</p> <p><u>SRCS Subscriber</u> A Customer of the Company who receives a photovoltaic energy subscription from a SRCS Producer.</p> <p><u>Total Aggregate Fixed Retail Rate (TAFRR)</u> The total effective rate(s) for energy and demand charges under each applicable service rate schedule as well as all applicable Base Rate Adjustments, and Non-Base Rate Adjustments, excluding the Distribution, Generation and Transmission Standby Capacity Reservation Fees of Schedules SST, PST and TST, converted to a Kilowatt-Hour rate. A specific TAFRR is calculated for the following Schedules: R, RD, RD-TDR, RE-TOU, C, SG, PG, and TG. The TAFRR for Schedule SG will also apply to Schedule SGL. Except for the ECA component of the rates, the TAFRR for 2012 shall be based on rates effective July 1, 2012 and for subsequent Years shall be based on rates effective January 1st of the Year. The ECA Component of the TAFRR shall be the ECA Component projected for each Year, including the TAFRR for 2012.</p> <p><u>Total Aggregate Variable Retail Rate (TAVRR)</u> A Customer specific Kilowatt-Hour rate for Commercial and Industrial (C&amp;I) Customers, available to Customers receiving SRCS service from an SRCS Resource that was operational prior to January 1, 2017. For SRCS resources whose operations begin after January 1, 2017, the TAVRR credit rate will not be available. The TAVRR is calculated by dividing the sum of Billed Amounts associated with (1) Demand Base Rates, (2) GRSA for Demand Base Rates; and the following Demand Based or Energy Based Riders: (3) PCCA, (4) DSMCA and (5) TCA and (6) CACJA of the Customer’s Annual Billed Amounts from the calendar Year preceding the current service Year</p> <p>(Continued on Sheet No. 114C)</p>	

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	Sheet No. _____

ELECTRIC RATES	RATE
SOLAR REWARDS COMMUNITY SERVICE	
SCHEDULE SRCS	
<p><u>DEFINITIONS – Cont’d</u></p> <p><u>Total Aggregate Variable Retail Rate (TAVRR) – Cont’d</u> (excluding the Distribution, Generation and Transmission Standby Capacity Reservation Fees of Schedules SST, PST and TST), divided by the Customer’s annual Kilowatt-Hour consumption during the same preceding calendar Year; plus Energy Base Rate, GRSA for Energy Base Rate, and Energy Based Non-Base Rate Adjustments, excluding the ECA Component. The Energy Based Rate Base Rate Adjustment and GRSA for Energy Based Rate Base Rate Adjustments, or BER defined above, of the TAVRR for 2012 shall be based on rates effective July 1, 2012 and for subsequent Years shall be based on rates effective January 1<sup>st</sup> of the Year. The ECA component of TAVRR shall be the ECA Component projected for each Year.</p> <p><u>Transmission and Distribution Cost (T&amp;D Component)</u> The T&amp;D Component is an amount of T&amp;D Costs that are a part of Base Rate Adjustments, expressed as a Kilowatt-Hour cost that shall be subtracted from either the TAFRR or TAVRR as part of the determination of the SRCS Credit. For the TAFRR, the T&amp;D Component is a fixed amount differentiated for each Rate Schedule, which is subtracted from the TAFRR. For the TAVRR, it is a percentage of the TAVRR differentiated for each Rate Schedule, which is multiplied times the TAVRR and then subtracted from the TAVRR.</p> <p><u>Transmission Cost Adjustment Component (TCA Component)</u> The TCA Component is the Transmission Cost Adjustment Rider, expressed as a Kilowatt-Hour cost that shall be subtracted from either the TAFRR or TAVRR as part of the determination of the SRCS Credit. For the TAFRR, the TCA Component is a fixed amount differentiated by Schedule, which is subtracted from the TAFRR. For the TAVRR, it is a percentage amount differentiated for each Schedule, multiplied times the TAVRR and then subtracted from the TAVRR.</p> <p>(Continued on Sheet No. 114D)</p>	

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Colo. PUC No. 7

Sheet No. 114D

Cancels  
Sheet No. \_\_\_\_\_

ELECTRIC RATES	RATE
SOLAR REWARDS COMMUNITY SERVICE	
SCHEDULE SRCS	
<p><u>SRCS FIXED CREDIT RATE CALCULATION</u></p> <p>The Company will calculate the SRCS Fixed Credit annually at the end of each calendar Year, except for the first Year of implementation, to be in effect on January 1<sup>st</sup> of the subsequent Year. For the first Year of implementation, the SRCS Fixed Credit was based on rates in effect as of July 1, 2012, except for the ECA Component, which is based on the projected average for 2012. The SRCS Fixed Credit is calculated as follows:</p> <p>SRCS Fixed Credit = A – B – C</p> <p>Where:</p> <p>A = TAFRR</p> <p>B = T&amp;D Cost Component Amount</p> <p>C = TCA Cost Component Amount</p>	
<p><u>SRCS INDIVIDUAL C&amp;I CUSTOMER VARIABLE CREDIT RATE CALCULATION</u></p> <p>The Company will calculate the SCRS Individual C&amp;I Customer Variable Credit for Customers receiving SRCS service from an SRCS Resource that is operational prior to January 1, 2017. The variable credit rate will be calculated each Year of the Customer's service based on the Customer's bills for the preceding calendar Year. If the C&amp;I Customer does not have full preceding calendar Year of Monthly bills, the Customer will receive the SRCS Fixed Credit based on the rate class of the Customer as of January 1st, or if a new subscription, the Customer's rate class as of the date of program start under this tariff. The SRCS Individual Customer Variable Credit is calculated as follows:</p> <p>SRCS Individual Customer Variable Credit</p> <p>= A – [(B + C) times A]</p> <p>Where:</p> <p>A = TAVRR</p> <p>B = T&amp;D Cost Component Percentage</p> <p>C = TCA Cost Component Percentage</p>	<p>NN</p>
<p><u>SRCS CREDIT BILLING</u></p> <p>The Company will calculate and apply the SRCS Credit as part of the Monthly bill for electric service under the applicable rate schedule to each SRC Subscriber. The SRCS Credit Kilowatt-Hour Rate shall be multiplied by the Kilowatt-Hour production from the SRCS Allocation and applied in the first full billing Month for each SRCS Subscriber following the date that the Company records the SRCS Allocation for the SRCS Subscriber as received by the Company from the SRC Producer based on the Company's meter reading of the photovoltaic energy from the SRCS Producer. In the event that a net credit balance remains on any Monthly bill after applying an SRCS</p> <p>(Continued on Sheet No. 114E)</p>	

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Sheet No. 114E

Cancels  
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ELECTRIC RATES	RATE
SOLAR REWARDS COMMUNITY SERVICE	
<p style="text-align: center;">SCHEDULE SRCS</p> <p><u>SRC CREDIT BILLING</u> – Cont'd</p> <p>Credit, the Company shall apply such remaining credit towards the next Monthly bill for service. Excess billing credits will be rolled over indefinitely until the Customer terminates service.</p> <p>The Company will not apply any SRCS Credit towards non-gratuitous charges, gas service charges as provided under Company's P.U.C. No. 6 – Gas Tariff, or non-regulated service charges as may be assessed on a SRCS Subscriber's total bill.</p> <p>The Company will apply the SRCS Credit for billing except for the Service and Facility Charge. However the Company will not consider the applicable SRCS Credit in determining the Averaged Monthly Payment for SRCS Subscribers who participate in the Average Monthly Payment Plan for Residential and Small Commercial Customers. The Company will not consider the SRCS credit in determining a Customer's deposit requirement.</p> <p>In instances where a SRCS Subscriber's SRCS Credit is applicable to an initial service bill, the Company will apply the SRCS Credit as set forth in this section. In instances where SRCS Subscriber's SRCS Credit is applicable through the date of a final service bill, the Company will apply the applicable credit on the final bill. In addition, for any remaining SRCS credit balance in the final bill or for any applicable SRCS Credit not credited due to the lag between the reading of the SRCS Production and posting the SRCS Credit on the final bill, no payment to the Customer shall be required.</p> <p>The Company will apply a SRCS Credit to past due bills or arrearages for electric service.</p> <p><u>RULES AND REGULATIONS</u></p> <p>Should there be any conflict between the provisions within this Schedule SRCS and the applicable service tariff, the provisions herein will control. Service supplied under this rate schedule is subject to the terms and conditions set forth in the agreement between the Customer and Company and the Company's Rules and Regulations on file with the Commission and the following conditions:</p> <ol style="list-style-type: none"> <li>1. The SRCS Producer will install, own and maintain the photovoltaic generation system (PV System). Company will install, own, operate and maintain suitable metering for measuring the production of the PV System. The SRCS Producer or their agent shall be responsible to provide, own, operate and maintain at the SRC Producer's cost any necessary electronic communications that are required by the Company to record the SRCS Producers photovoltaic energy production.</li> </ol> <p style="text-align: center;">(Continued on Sheet No. 114F)</p>	

ADVICE LETTER  
NUMBER 1728 Amended

DECISION/  
PROCEEDING  
NUMBER \_\_\_\_\_

REGIONAL VICE PRESIDENT,  
Rates & Regulatory Affairs

ISSUE  
DATE December 1, 2016

EFFECTIVE  
DATE January 1, 2017

ELECTRIC RATES	RATE
SOLAR REWARDS COMMUNITY SERVICE	
SCHEDULE SRC	
<u>RULES AND REGULATIONS – Cont’d</u>	
2.	The SRCS Producer shall notify Company of any service failure or damage to the Company’s or the SRCS Producer’s equipment. Repair and/or replacement of Company equipment shall be provided by Company as soon as practicable, subject to the Company’s operating schedules, after notification by SRCS Producer of any service failure. The SRCS Producer shall be responsible for repairing damage to the SRCS Producer’s equipment as soon as practicable.
3.	The SRCS Producer shall be responsible to ensure the PV System design and installation is in compliance with the Company’s Interconnection Standards and safety provisions and the Company’s Safety Interference Interconnection Guidelines for Cogenerators, Small Power Producers and Customer-owned Generators. SRC Producers who do not comply with these standards will be subject to termination of service as well as SRC Subscriber’s Allocations under this schedule and under the applicable service schedule until compliance is obtained.
4.	The Company will file no later than November 15th of each Year for the Fixed SRCS Credits for each Rate Schedule and for the Components of the C&I Customer Specific Credits that are to be effective January 1st of the subsequent Year.
<u>RATE SCHEDULE FOR FIXED SRCS CREDIT for 2019</u>	
<u>Rate Schedule</u>	<u>Fixed SCRS Credit</u>
R, RE-TOU	\$0.07032
RD	\$0.05969
RD-TDR	\$0.07030
C, NMTR	\$0.06725
SG, SG-CPP, STOU, SPVTOU	\$0.06457
SGL	\$0.09070
SST	\$0.06457
PG, PG-CPP, PTOU, SCS-7	\$0.05491
PST	\$0.05491
TG, TG-CPP, TTOU, SCS-8	\$0.05084
TST	\$0.05084
(Continued on Sheet No. 114G)	

PUBLIC SERVICE COMPANY OF COLORADO

Second Revised

Sheet No. 114F

P.O. Box 840  
Denver, CO 80201-0840

Sub. First Revised

Cancels 114F  
Sheet No.

ELECTRIC RATES		RATE
SOLAR REWARDS COMMUNITY SERVICE		
SCHEDULE SRCS		T
COMPONENTS FOR CALCULATING C&I INDIVIDUAL SRCS CREDITS for 2019		
	(BER)	R
<u>Rate Schedule</u>	<u>Base Energy Rate with GRSA</u>	R
SG, SG-CPP, SST, STOU, SPVTOU	\$ 0.00441	R
SGL	\$ 0.00441	R
PG, PST, SCS-7, PTOU, PG-CPP	\$ 0.00439	
TG, TST, TTOU, SCS-8, TG-CPP	\$ 0.00422	
		II
	<u>ECA Component</u>	I
SG, SG-CPP, SST, STOU, SPVTOU	\$ 0.03012	I
SGL	\$ 0.03012	
PG, PG-CPP, PST, SCS-7, PTOU	\$ 0.02939	R
TG, TG-CPP, TST, TTOU, SCS-8	\$ 0.02879	R
		R
		R
		R
	<u>T&amp;D Component Cost %</u>	
SG, SG-CPP, STOU, SPVTOU,	24.36%	
SST	24.36%	
SGL	17.79%	
PG, PG-CPP, PTOU, SCS-7	18.85%	
PST	18.85%	
TG, TG-CPP, TTOU, SCS-8	7.11%	II
TST	7.11%	I
		I
		I
		I
	<u>TCA Component Cost %</u>	
SG, SG-CPP, STOU, SPVTOU	1.94%	
SST	1.94%	
SGL	6.59%	
PG, PG-CPP, PTOU, SCS-7	1.73%	
PST	1.73%	
TG, TG-CPP, TTOU, SCS-8,	1.86%	
TST	1.86%	

ADVICE LETTER  
NUMBER 1780

ISSUE  
DATE November 15, 2018

DECISION/  
PROCEEDING  
NUMBER

REGIONAL VICE PRESIDENT,  
Rates & Regulatory Affairs

EFFECTIVE  
DATE January 1, 2019

# **ATTACHMENT F**

**Solar\*Rewards Producer Agreement**



Solar Garden ID No. \_\_\_\_\_

**Solar\*Rewards Community Producer Agreement  
Solar\*Rewards Community Photovoltaic (PV) Systems  
For SRC Producers**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and \_\_\_\_\_ (“SRC Producer”), a \_\_\_\_\_, whose business address is \_\_\_\_\_, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

**RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of kW.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1. “Commission” shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. “Common Ownership” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.
- 1.3. “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.
- 1.4. “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.5 “Force Majeure” shall have the meaning as set forth in Section 6.1 of this Agreement.

1.6 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.7 “Interconnection Agreement” shall mean the separate agreement to be entered into between SRC Producer and Public Service providing the terms and conditions by which SRC Producer may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.8 “Low-Income Customer” shall mean, consistent with Section 40-3-106, C.R.S., that a customer be at or below 185% of the Federal Poverty Line.

1.9 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.6 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.10 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity, including any and all associated RECs, delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.11 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.1 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possession from SRC Producer to Public Service.

1.12 “Production Month” shall mean the calendar month during which Photovoltaic Energy is produced by the PV System and delivered to Public Service at the Production Meter.

1.13 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy subject to this Agreement.

1.14 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System. If the PV System Owner is the same entity as SRC Producer, then Section 3.2 hereof shall not be applicable.

1.15 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652(t). In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.16. “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.17 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement.

1.18 “Solar\*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar\*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$300 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in the 2017 and future contract cycle with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.



1.19 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.6 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.20 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.21 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.22 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.23 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.24 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

## ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy produced by the PV System shall be the full responsibility of the SRC Producer.

2.2 Delivery of RECs Associated with Photovoltaic Energy. Effective upon the Date of Commercial Operation, all of the RECs attributable to all Photovoltaic Energy produced by the PV System attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month, shall be delivered to Public Service at the Production Meter.

2.3 Positive REC Price and REC Payments to SRC Producer. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer the price of \_\_\_\_\_ per MWh with an escalating percentage of 0.00% for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative REC Price and Option for One-Time REC Payment to Public Service. If the REC price is negative Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ \_\_\_\_\_. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative REC Price and Payment(s) to Public Service. The amount to be paid by SRC Producer to Public Service shall be expressed in dollars per megawatt-hour (MWh), SRC Producer shall pay Public Service the price of \_\_\_\_\_ per MWh of energy generated by the PV system for the subscribed portion of Photovoltaic Energy recorded at the Production Meter. Payments shall be made by check to Public Service by SRC Producer. Such payments shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then- effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all Photovoltaic Energy output and/or the ability to transfer good and sufficient title of same to Public Service. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Public Service.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

### ARTICLE III REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT

3.1 SRC Producer represents and warrants as follows:

(a) SRC Producer is either the PV System Owner or is a subscriber organization organized under Section 40-2-127, C.R.S., and has been duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer has been duly authorized to sell and deliver to Public Service Photovoltaic Energy produced by the PV System on behalf of all SRC Subscribers having valid Subscriptions in the PV System, the purchase price and full consideration for which are the SRC Credits to be applied on the SRC Subscribers' electric service bills in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

(c) SRC Producer has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the PV System to Public Service on behalf of the PV System Owner, the SRC Subscribers and itself.

(d) SRC Producer has the right and authority to sell all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter.

3.2 If the PV System Owner and the SRC Producer are not the same person, then the undersigned PV System Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes SRC Producer to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions. The conditions set forth in the following subparagraphs (a) through (f) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of such conditions. For purposes of this Agreement, the SRC Allocation for any SRC Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid SRC Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such SRC Allocation is changed by SRC Producer in a manner that satisfies all such conditions.

(a) No SRC Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) Unless the SRC Subscriber is an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, each Subscription shall be sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's

average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premise served by Public Service and shall be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) At least percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed shall not be the generation of electricity for retail or wholesale sale.

3.4 Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. Public Service shall have the right hereunder to refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during the period it is not in compliance with any of such conditions.

(a) The PV System shall have at least ten SRC Subscribers.

(b) The PV System shall have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System shall be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If, as the result of the official and valid action of any governmental body, the PV System is no longer located within Public Service's existing service territory, then Public Service shall also have the right to terminate this Agreement effective on or after the date the PV System is no longer located within Public Service's existing service territory, by providing ten (10) days advance written notice to SRC Producer.

(d) The location of CSGs may not result in more than 2 MWs of commonly owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for rural CSGs. In urban areas the distance between points of interconnection between commonly owned CSG will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System shall be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 False Representation. Any representation or warranty made by SRC Producer in this Agreement that shall prove to have been false or misleading in any material respect when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 hereof.

3.8 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

#### ARTICLE IV **TERM, COMMERCIAL OPERATION AND PERFORMANCE**

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Commercial Operation Date, SRC Producer agrees to (i) submit semi-annual progress reports to Company including current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project, (iii) Upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this agreement, *provided, however, that* Company shall comply with all of SRC Producer's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the Production Meter has been installed; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within sixty (60) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as a required deposit in connection with its application for the PV System under Public Service's Solar\*Rewards Community Program. If Commercial Operation is not achieved within 18 months of the date the application is created by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3665(d)(IV)(A) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3665, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged or destroyed, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy or RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to the estimated annual generation of the PV System, as determined via PVWATTS, multiplied by the number of years remaining in the Term as of the effective date of such termination, plus a prorated amount of the REC payment.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (e.g., account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any low-income subscriber meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.



4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. In the event Public Service discovers through a credible source that the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. In the event Public Service discovers through a credible source that the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Once Commercial Operation has been obtained, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Semi-annual Progress Reports. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service. Progress reports are no longer required once the garden has obtained commercial operation.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

## ARTICLE V PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 18 months to bring the PV System to commercial operation. If the PV System has not achieved this status within 18 months, the deposit associated with the PV System will be forfeited to the Renewable Energy Standard Account. If, after 24 months the PV System has not been brought to commercial operation, the SRC Producer will be fined at a rate of \$1,000 per day beginning with the first day of the 25<sup>th</sup> month and continuing until the final day of the 30<sup>th</sup> month. Any fines accrued during this time period must be paid in advance of the setting of any meter by Public Service. If, the PV System has not been brought into commercial operation after 30 months, Public Service will consider the PV System incomplete and remove it from the program with any associated capacity forfeited and any outstanding fines or other costs due immediately to Public Service from the SRC Producer.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.2 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule

of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that SRC Producer and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3667, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.5. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

## ARTICLE VI FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term “Force Majeure,” as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated REC's in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy or RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the Customer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

## ARTICLE VII DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below:

(A) PV System Owner, SRC Producer and their affiliated and parent companies failure at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.4 shall not apply to an event of default under this paragraph.

(B) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 Days after notice thereof shall have been given by the non-defaulting Party.

72 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

73 Failure of either Party to assert a default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

74 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

## ARTICLE VIII LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the taxable consequences, if any, to SRC Producer with respect to the production and sale of Photovoltaic Energy or RECs, and SRC Producer is urged to seek professional advice regarding this issue.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer's administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

## ARTICLE IX LAWS AND REGULATORY BODIES

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

ARTICLE X  
MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent, acceptable to Company, to assignment to any of SRC Producer's requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.



10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy  
Attn: Solar\*Rewards Community  
1800 Larimer St, 15<sup>th</sup> Floor  
Denver, CO 80202  
Fax: 1.800.252.4371

If to SRC Producer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from SRC Producer, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

**SRC Producer**

**SRC Producer Name (printed):** \_\_\_\_\_

**SRC Producer Representative:** \_\_\_\_\_

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

**SRC Producer Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Public Service Company of Colorado d/b/a Xcel Energy**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

**As authorized agent for  
Public Service Company of Colorado**

**PV System Owner (if different from SRC Producer)**

**PV System Owner Name (printed):** \_\_\_\_\_

**PV System Owner Representative:** \_\_\_\_\_

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

**PV System Owner Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# **ATTACHMENT G**

**Notice of Cancellation Within Three Days**

## ATTACHMENT G

### Notice of Cancellation

\_\_\_\_\_  
(Date)

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 or canceled within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this Agreement or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice to SunShare, LLC, 1724 Gilpin Street, Denver, CO 80218, not later than midnight of \_\_\_\_\_

(Date)

I, \_\_\_\_\_ hereby cancel this transaction on \_\_\_\_\_.  
(Printed Name) (Date)

\_\_\_\_\_  
(Signature)

# **ATTACHMENT H**

**Terms of Service**

# ATTACHMENT H

## 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 Public Service Company of Colorado, 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 words "Subscriber" and "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. To ensure an orderly and efficient management of community solar gardens, the community solar garden referred to on the cover page may be substituted for another community solar garden, which will not change any of the terms contained herein. Upon a change in the community solar garden, you will be notified and "Solar Garden" will automatically be deemed to refer to such new community solar garden. Colorado Revised Statute § 40-2-127, et seq., and Rule 3665, 4 CCR 723-3 allows you the beneficial use of the electricity generated by the Solar Garden, and to own a subscription to 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 Colorado service territory
  - C. The generation of electricity for wholesale or retail sale is not the primary business at any of your Locations.
  - D. Neither your Production Capacity nor the sRECs association with your Production Capacity are more than 40% of the nameplate capacity of the Solar Garden.
  - E. Your Solar Energy will supply not more than 120% of your average annual electricity consumption at your Locations, reduced by any existing on-site renewable generation facilities at those Locations.
  - F. You are at least eighteen (18) years of age.
  - G. This is only an agreement to purchase Solar Energy and to receive a Bill Credit (as defined below); we will own the Solar Garden and you will have no ownership interest in the Solar Garden.
  - H. The Solar garden 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. You will have no right to sell, give away, transfer, pledge, remove, relocate, alter or tamper with the Solar Garden at any time, except as specifically outlined in this Agreement.

In addition, you acknowledge that, to be eligible to enter this Agreement, you must first satisfy our credit and/or other eligibility requirements, which are subject to change and not contained in this Agreement.

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.

4. **Bill Credits.** Xcel Energy is responsible for accepting deliveries of your Solar Energy, and for providing you with a Bill Credit in dollars for Solar Energy produced on your behalf on your monthly retail electric service bill. The amount of your Bill Credit is calculated by multiplying the kWh produced by your subscription by the applicable SRCS Credit Kilowatt-Hour Rate (the "Bill Credit Rate") for your meter type. The Bill Credit Rate is calculated by Xcel Energy each year, as established and regulated by the Colorado Public Utilities Commission ("CPUC") and as set forth in Xcel Energy's CO Rate Book at Sheet Number 114 (substantially similar to [Attachment E, Xcel/Customer Tariff](#)). It is important to note that you will begin earning Bill Credits on the Commencement Date; however, your Bill Credits will be applied approximately 1-2 billing cycles after the end of each production month. SunShare will never invoice you for Solar Energy for which you have not earned Bill Credits on your Xcel Energy bill, regardless of the timing.
5. **Solar Renewable Energy Credits.** Our contract with Xcel Energy currently requires us to sell the Solar Renewable Energy Credits ("sRECs") associated with the Solar Garden(s) to Xcel Energy along with the Solar Energy. 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. Notwithstanding the foregoing, in the event that the applicable laws and rules in Colorado change to give you the option of retaining the sRECs, transferring the sRECs to Xcel Energy, or transferring the sRECs to someone other than Xcel Energy, this Agreement shall be deemed automatically changed to reflect such change(s) in law, and we may not provide to you notice(s) of changes in law.
6. **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 2017 Xcel Energy coverage requirement is \$2 million per occurrence.) You are not responsible for insuring any aspect of the Solar Garden.
7. **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 CPUC, or the Colorado Office of Attorney General. You agree to complete and execute any forms necessary to effect said authorization.
8. **Taxes.** Under Colorado 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.
9. **Related Agreements.** In addition to the obligations set out in this Agreement, we also have obligations under the related agreements described in Sections 10 and 11, directly below.
10. **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, where applicable, 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 CPUC-approved Solar\*Rewards Community Program tariff. However, you acknowledge that the laws and rules in the state of Colorado

may change regarding ownership and transferability of sRECs, and as a result, Xcel Energy's responsibilities under this Section 10(B) may likewise change to reflect such changes in laws and rules.

- 11. 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 6 of your Solar Services Agreement, *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.
- 12. Your Acknowledgments.** You hereby acknowledge the following: Because certain terms may not be identifiable at the time you sign this Agreement, you understand that certain terms will be provided to you upon your assignment to a particular Solar Garden. These will include; your initial monthly subscription rate, calculated based on a one-half-penny increase to the Bill Credit calculated at the Solar Garden's Commercial Operation, which may fluctuate annually based on changes to the Bill Credit rate; your allocation in kilowatts DC, based on your historical usage; the estimated annual kilowatt hours your subscription will generate; and the estimated price schedule for the Term of your subscription. These additional terms will be communicated to you via email, and will be deemed automatically included in this Agreement upon such notification. We will provide you access to a copy of the Agreement with these new terms. You are able to pay the Monthly Subscriber Payment; you are not relying on statements made by us with respect to any tax or other financial implications that may arise as a result of entering into or the implication of this Agreement; nothing in this Agreement or any other information provided by or on our behalf in connection with this Agreement constitutes legal, tax, or financial advice; and we do not guarantee production of the Solar Garden.

- 13. 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 applicable), to Xcel Energy as your agent under Section 11, *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 under this Agreement, as those phrases are used in Section 7701(e)(4)(A) of said code.



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.

14. **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").

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 6 of your Solar Services Agreement, *Changes in Your Participation*.
15. **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 6 of your Solar Services Agreement, *Changes in Your Participation*.
16. **Lender's Default Rights**. If we default under our financing documents with our Lender, the follow 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 of your Solar Services Agreement, (*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.

**17. 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, or are otherwise are not permitted under applicable law.

**18. 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 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 attorneys' fees, and other actual expenses relating to your default).

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 or appropriate, to preserve our right to said capacity and benefits.

**19. 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.

**20. 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.
21. **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.
22. **Company Indemnity; Restriction on Customer Liens.** Subject to the limitations contained in Section 23 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.
23. **Limitations of Liability.** Except for our indemnity obligations under Section 22 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.**
24. **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.
- "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.
25. **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.

- 26. Dispute Resolution.** Each of us agrees that to expedite and control the costs of disputes, the resolution of any dispute between us relating to this Agreement ("Dispute") will be resolved according to the following procedures:
- A.** 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.
  - B.** 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.
- 27. Governing Law, Jurisdiction, and Venue.** The laws of the State of Colorado 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; both parties hereby consent to said jurisdiction.
- 28. Legal Notices.** All required notices (including any amendments to or termination of this Agreement) and communications under this Agreement, will be in writing and will be deemed given if sent by email, nationally recognized overnight courier or mailed by registered or certified mail (return-receipt requested) to the address or email address listed on the cover page of this Agreement, or to such other address or email 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.
- 29. Miscellaneous.**
- A. 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 date this Agreement was generated. 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.