

# 2022-2025 RENEWABLE ENERGY STANDARD PLAN

Public Service Company of Colorado  
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Volume 3

Colorado PUC E-Filings System



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Application ID: {!Integration\_Opportunity\_ID\_\_c}

## Solar\*Rewards REC Purchase Contract

This Solar\*Rewards REC Purchase Contract (the “Contract”) is made and entered into {!Today\_s\_Date\_\_c}, by and between Public Service Company of Colorado (“Public Service” or “Company”), d/b/a/ Xcel Energy, a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202-5533, and {!PV Owner/Operator\_Name\_\_c} (“PV Owner/Operator”), each of which may be referred to herein individually as a “Party” or collectively as the “Parties.” 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 (the “Rules”), as of the date of this Contract. This Contract implements changes to § 40-2-124, C.R.S. adopted in SB21-261, which among other things allows retail electric service customers to deploy photovoltaic solar systems on noncontiguous property owned or leased by such customer and allows such systems to be sized to supply no more than 200% of the reasonably expected average total consumption at all properties owned or leased by such customer within Public Service’s service territory. All references in this Contract to the size of solar systems in kilowatts (“kW”) mean kW Alternating Current (“AC”) unless otherwise indicated herein.

1. Purchase and Sale. On the terms and subject to the conditions set forth in this Contract, PV Owner/Operator agrees to sell and Public Service agrees to purchase Renewable Energy Credits (“RECs”) as described herein. The PV System will have a rated AC nameplate capacity of {!NamePlate\_Capacity\_kW\_\_c} kW. Public Service agrees to purchase all RECs generated by the PV System for the Term hereof. For purposes of this Contract: (i) “PV System” means the photovoltaic solar system installed at the address specified in **Schedule A** (“PV System Address”), which may or may not be installed in conjunction with an energy storage system, electric vehicle charging system or other distributed energy resource; (ii) “Host Address” and “Host Addresses” refer to the addresses set forth in **Schedule A**; (iii) “Tenant” refers to a Host’s tenant or other authorized possessor of and customer of record at a Host Address; and (iv) “Host” refers to either PV Owner/Operator or a third party that has authorized PV Owner/Operator to enter into this Contract and perform the obligations of “PV Owner/Operator” hereunder, and in either case is the person or entity that is a retail electric service customer of Public Service (or whose Tenant is the retail electric service customer) and that owns or leases each Host Address.
2. Purchase Price. The purchase price for the RECs hereunder shall be expressed in cents per kilowatt hour (“kWh”), with one REC being generated for each megawatt hour (“MWh”) of power generated by the PV System. Public Service shall pay PV Owner/Operator the price of \${!Incentive\_\_r.Name} per kWh of power generated by the PV System in exchange for all RECs attributable to such power. Such purchase price shall be payable in accordance with this section 2 and subsection 5(k) below. Public Service may require a PV Meter for all PV Systems greater than 10 kW DC (direct current), in which case PV Owner/Operator must pay the PV Meter charges as set forth in this Agreement and the PV System will be considered a Metered System for purposes of this Agreement. PV Owners/Operators with PV Systems of 10 kW DC (direct current) or less are not required

to have a PV Meter, but may request a PV Meter from Public Service, in which case PV Owner/Operator must pay the PV Meter charges as set forth in this Contract and the PV System will be considered a Metered System for purposes of this Contract. REC payments shall be made to PV Owner/Operator until the 240th monthly or 20th annual REC payment, as applicable (or date of monthly or annual payment even if the owed amount is zero) hereunder (the "Payment Limit"), after which no further REC payments shall be made. Notwithstanding any provision (including subsection 5(1)) stating that PV Owner/Operator will receive an annual payment, Public Service may, in its sole discretion and in accordance with Decision No. C20-0606 in Proceeding No. 20V-0297E of the Colorado Public Utilities Commission (the "CPUC Decision") or other applicable CPUC rules and decisions, elect to make monthly payments to PV Owner/Operator; provided, that in such instance, Public Service may in its sole discretion later switch to making annual payments to PV Owner/Operator, in which case (A) each monthly payment to PV Owner/Operator shall constitute a prorated portion of one (1) annual payment for purposes of calculating the Payment Limit and (B) Public Service may prorate any annual payments to account for such monthly payments made during the Term. For purposes of this Contract "PV Meter" means a second meter at the PV System or a customer meter capable of recording the PV System's generation, and in either case, without any energy storage system (except an energy storage system exclusively charged by the PV System) on the PV System side of the meter.

3. Incorporation of Tariff. The Parties shall abide by, and this Contract shall be subject to, the Company's applicable electric tariffs related to photovoltaic systems or net metering, as applicable, as on file with the Colorado Public Utilities Commission ("CPUC") and as they may be revised from time to time. In the event of any conflict between the terms of this Contract and Company's electric tariff, the provisions of the tariff shall control.
4. Representations, Warranties, and Covenants. PV Owner/Operator hereby makes the following representations as of the date hereof, and warranties and covenants to Public Service as of each delivery of RECs to Public Service during the Term:
  - a. The person signing this Contract on behalf of PV Owner/Operator is individually authorized and competent to sign this Contract and to bind PV Owner/Operator to the terms hereof.
  - b. PV Owner/Operator or Host will own the PV System, the Host or Host's Tenant is the person or entity in whose name electric service is listed at each Host Address, and the PV System will be located at the PV System Address.
  - c. The primary business at each Host Address is not and will not be the generation of electricity for retail or wholesale sale.
  - d. The proposed PV System nameplate capacity in kW AC at the PV System Address does not and will not exceed the service entrance capacity at the PV System Address.

- e. The PV System is and will be sized to supply no more than two hundred percent (200%) of the aggregate reasonably expected average annual consumption of electricity by the Host at all Host Addresses. PV Owner/Operator acknowledges that Public Service's Solar\*Rewards Program is only available to PV systems where the estimated annual generation, as determined via PVWATTS, is not more than 200% of the reasonably expected average annual total consumption of electricity at all properties owned or leased by Host within Public Service's service territory and acknowledges that only properties (i) that are owned or leased by Host and (ii) that are identified as Host Addresses in **Schedule A** will be included in estimated consumption for sizing the PV System. PV Owner/Operator represents that it has no present intention to transfer its ownership or rights in any Host Address, or otherwise employ any means to circumvent the sizing limitations in this subsection 4(e) and does not presently have reason anticipate a change in such intention.
- f. Whether or not PV Owner/Operator is the Host, PV Owner/Operator represents as of the date hereof, and warrants and covenants throughout the Term, that, for each Host Address, the Host or Host's Tenant is and shall be at all times a retail electric service customer of Public Service at such Host Address, the Host Address is and shall be at all times within Public Service's electric service territory and the Host Address is and shall be at all times owned or leased by the Host (subject to cure by delivering a new Host Acknowledgement pursuant to subsection 4(g)).
- g. If PV Owner/Operator is not the Host, PV Owner/Operator represents as of the date hereof, and warrants and covenants throughout the Term, that (i) it is and shall be at all times duly authorized by the Host to own and/or operate (as applicable) the PV System at the PV System Address and to perform any and all obligations of PV Owner/Operator and acts permitted to be performed by PV Owner/Operator under this Contract; (ii) the PV System is and shall be at all times operated for the benefit of the Host; and (iii) it shall notify Public Service immediately if at any point during the Term of this Contract any of the foregoing is not true and correct in all respects. PV Owner/Operator shall obtain a Host Acknowledgement in substantially the form attached hereto as **Exhibit 2** prior to the execution of this Contract. If PV Owner/Operator fails to obtain a Host Acknowledgement prior to the execution of this Contract, or if at any time during the Term such Host Acknowledgement is not true and correct in all respects or the foregoing warranties are not true and correct in all respects, Public Service may terminate this Contract immediately upon notice to PV Owner/Operator. If at any point during the Term the Host transfers ownership of the PV System Address to a new Host or a new Host leases the PV System Address, PV Owner/Operator shall cause the new Host to execute and deliver a Host Acknowledgement in substantially the form attached hereto as **Exhibit 2** within thirty (30) days of such transfer. If the new Host fails to timely execute and deliver such a Host Acknowledgement to Public Service, Public Service may terminate this Contract immediately upon notice to PV Owner/Operator.

5. Terms and Conditions.

- a. PV Owner/Operator shall ensure that the PV System equipment installed at the PV System Address is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.
- b. The PV Owner/Operator shall cause the PV System to achieve Substantial Completion within (i) 18 months following the Application Date if the PV System is 1 megawatt ("MW") or less, or (ii) 18 months following the execution of the Interconnection Agreement if the PV System is larger than 1 MW (such dates, as applicable, the "Target Completion Date"). Public Service will automatically grant a six month extension following the Target Completion Date, provided that: (i) for PV Systems 1 MW or less, the PV System Owner/Operator will forfeit the deposit to the Renewable Energy Standard Adjustment ("RESA") account in full one day after the Target Completion Date; and (ii) for PV Systems larger than 1 MW, the PV Owner/Operator will forfeit the deposit to the RESA account in an amount equal to 1/180th of the deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the deposit. For purposes of this Contract: (i) "Substantial Completion" means the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the PV Owner/Operator having requested a scheduled witness test for the PV System, if one is required; (ii) "Application Date" means the date a PV System application was submitted and the application deposit is paid; and (iii) "Renewable Energy" means energy generated from renewable energy resources including renewable distributed generation.
- c. "Date of Commercial Operation" shall be the date that PV Owner/Operator has met all of the criteria of subsection 5(b) above and all necessary metering has been installed or reprogrammed.
- d. This Contract 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 (the "Term").
- e. The PV System must qualify as Retail Renewable Distributed Generation, at all times during the Term of this Contract. If at any time during the Term the PV System Address is no longer located within Public Service's service territory, this Contract will automatically terminate. If the PV System no longer qualifies as Retail Renewable Distributed Generation, this Contract will automatically terminate.
- f. This Contract may be assigned or deemed assigned as follows. If the PV Owner/Operator is no longer the owner or authorized operator of the PV System, whether in connection with a disposition of the PV System Address, Host or Host's Tenant ceasing to be the Host at the PV System Address, a termination of PV

Owner/Operator's authorization by Host or otherwise, but in each case, the PV System remains in operation at the PV System Address, (i) the new customer of record at the PV System Address (or new owner or authorized operator of the PV System, if different from the new customer of record) may assume this Contract in a form satisfactory to Public Service and at the original REC purchase price set forth in Section 2 of this Contract, and complete any required Interconnection Agreement process, in which case, this Contract will be deemed assigned by the PV Owner/Operator with no further signature or other action required by the PV Owner/Operator, or (ii) Public Service may deem this Contract terminated (without requirement of notice) if the new customer of record does not take the actions in the foregoing clause (i) within a reasonable time, as determined by Public Service, but no less than thirty (30) days. PV Owner/Operator represents and warrants that any assignment to and assumption of its rights and obligations under this Agreement shall not breach any agreement or arrangement between PV Owner/Operator and Host. If the new customer of record does not assume this Contract or enter into a new Solar\*Rewards REC Purchase Contract for the PV System, PV Owner/Operator shall, upon the request of Public Service in its sole discretion, make any liquidated damages payments required in accordance with subsection 5(h).

- g. The PV System shall be installed as part of Public Service's Solar\*Rewards Program and subject to all program rules and policies. If the PV System is using an electric vehicle charging inverter or an energy storage system, or is similarly serving load behind the PV Meter, PV Owner/Operator may experience a loss in REC production. Public Service will only pay (i) for all Metered Systems, for RECs registered on the PV Meter or the PV Meter as adjusted by additional metering if appropriate, or (ii) for all Unmetered Systems, for RECs based on the Estimated Annual Production for the applicable year in accordance with CPUC Decision No. C20-0606 in Proceeding No. 20V-0297E (the "CPUC Decision") and other applicable CPUC rules and decisions. By signing this Contract, PV Owner/Operator acknowledges this potential loss of RECs and agrees to the foregoing limitation on Public Service's obligation to pay for RECs. To the extent that the PV System is attached to an energy storage system, Public Service will not pay the REC purchase price set forth in section 2 of this Contract for metered power discharged by the electric vehicle charging inverter, energy storage system unless that system or device is charged only by (and is interconnected such that technically it can only be charged by) the PV System.
- h. PV Owner/Operator 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 Contract. If during the Term of this Contract the PV System or any of the individual components of the system should be damaged or destroyed or otherwise fall into disrepair or fail to remain operational, PV Owner/Operator shall promptly repair or replace the equipment to its original specifications, tilt and orientation, or remedy such other failure to operate, at PV Owner/Operator'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 RECs generated prior to such damage, destruction or failure to operate. Public Service shall have the right, exercisable at its sole option, to terminate this Contract, with no further obligation of the Parties to perform hereunder following the effective date of such termination, (i) upon thirty (30) days' written notice if the time period for repair or replacement is reasonably anticipated to exceed one hundred eighty (180) days, or (ii) immediately upon written notice at any time before the PV System has been made fully operational again if the PV System has been out of operation for more than ninety (90) consecutive days. If (x) this Contract is terminated pursuant to this subsection 5(h) (except where the damage, destruction or other failure of the PV System to operate is the result of Force Majeure), or is terminated pursuant to subsection 5(r), before the 240th monthly or 20th annual REC payment, as applicable, as provided for in section 2 above, and (y) the combined AC nameplate capacity of the PV System located at the PV System Address and subject to a Solar\*Rewards REC Purchase Contract is one (1) MW or greater, then PV Owner/Operator shall pay Public Service liquidated damages in an amount equal to (i) the estimated annual generation of the PV System, as determined via PVWATTS and reflected in the attached **Exhibit 1**, after applying an annual cell degradation factor of one-half percent (0.5%) each year (compounded) after the first year, multiplied by (ii) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (iii) the positive difference resulting, if any, by subtracting the per kWh REC purchase price set forth in section 2 above from the weighted-average per kWh price for RECs based on the winning bids under Public Service's most recent request for proposals under its Solar\*Rewards program for onsite solar photovoltaic systems. In no event shall the foregoing calculation be deemed to result in a negative number or obligate Public Service to make any payment to PV Owner/Operator. In making such determination and applying the degradation factor, annual generation shall be determined for each 12-month period effective with the first day of the billing period following the Date of Commercial Operation and each anniversary thereof.

- i. Any excess Renewable Energy generated by the PV System at the PV System Address and not used or stored onsite by Host or Host's Tenant shall be delivered to Public Service. The Host or Host's Tenant will receive compensation for this excess Renewable Energy via "net metering" as set forth in the Company's Electric Tariff or other applicable tariffs on file with the CPUC and in effect from time to time.
- j. As between Public Service and PV Owner/Operator, PV Owner/Operator will be responsible for paying all taxes imposed by any governmental authority on the PV System and taxes imposed on any Host Address, including real property taxes and any increases therein related to the improvement of real property by the existence of the PV System at the PV System Address, and Public Service will have no liability for any of the foregoing.
- k. REC payments to PV Owner/Operator will be based on the following:

1. *Frequency of Payment.* Public Service may make REC payments in monthly or annual installments, at Public Service's discretion.
  2. *Method of Payment.* Public Service may make REC payments to PV Owner/Operator either in the form of a check or, if PV Owner/Operator provides the information required in Public Service's Automated Clearing House ("ACH") enrollment form, by ACH, at Public Service's discretion.
  3. *System Metering.*
    - i. For PV Systems with a PV Meter ("Metered Systems"), REC payments will be based on the metered energy recorded by the PV Meter at the PV System Address and upon Public Service's receipt of RECs generated by the PV System in the immediately preceding month or year, as applicable. Public Service shall install, own, operate and read the PV Meters and PV Owner/Operator shall reimburse Public Service for the cost of installing the PV Meters. Public Service shall be entitled to collect such reimbursement of the PV Meter installation costs by deducting all or a portion of such costs from the monthly REC payment to PV Owner/Operator until fully collected, or as otherwise provided for in the Company's tariff. Any time after the 20th anniversary of the Date of Commercial Operation, PV Owner/Operator may request and pay for, at applicable tariff rates, removal of the PV Meters. Company shall cease assessing the PV meter charge upon removal of the meters.
    - ii. For PV Systems without a PV Meter ("Unmetered Systems"), REC payments will be based upon the annual production of the PV System estimated using PVWATTS ("Estimated Annual Production"), in accordance with the CPUC Decision and other applicable CPUC rules and orders, which amount may be prorated for any partial year. PV Owner/Operator acknowledges that (i) the production for an Unmetered System is an estimate based on the expected output of the PV System, (ii) the PV System may produce more or less energy than estimated, and (iii) PV Owner/Operator shall only be entitled to payment for the Estimated Annual Production, in accordance with the CPUC Decision and other applicable CPUC rules and orders, subject to adjustment as set forth in this Contract.
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- l. Nothing in this Contract 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.
  - m. 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 PV Owner/Operator or Host 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 tax, financial or legal consequences, if any, to PV Owner/Operator or Host with respect to the installation of the PV System or the production and sale of Renewable Energy or RECs, and PV Owner/Operator is urged to seek professional advice regarding these issues.

- n. Except for PV Owners/Operators that are a Governmental Entity, PV Owner/Operator 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. As used in this Contract, "Governmental Entity" means any federal, state or local government, board, department, agency, special district, instrumentality, or other similar entity entitled to rely on the rights, immunities or protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time.
- o. Definition of Force Majeure.
  - 1. The term "Force Majeure", as used in this Contract, 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, hail 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 Renewable Energy and associated RECs in commercial quantities; long-term material changes in Renewable Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of PV Owner/Operator 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.
  - 2. The term Force Majeure does not include (i) any acts or omissions of any third party (including Host or Host's Tenant), including, without limitation, any vendor, materialman, customer or supplier of PV Owner/Operator or Host, 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, hail 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 PV Owner/Operator's supplies, or that affect demand or price for any of Public Service's or PV Owner/Operator's products.

p. Applicability of Force Majeure.

1. Except as expressly set forth in this Contract, neither Party shall be responsible or liable for any delay or failure in its performance under this Contract, 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 Contract, that Party shall give the other Party written notice to that effect.
2. Except as otherwise expressly provided for in this Contract, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Contract (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 RECs under this Contract except (i) for Metered Systems, for actual production as measured by the metering provisions of this Contract or to accept or compensate PV Owner/Operator for excess Renewable Energy under Public Service's net metering or other tariff except for Renewable Energy delivered to Public Service's electric grid as measured by a net meter, or (ii) for Unmetered Systems, for the Estimated Annual Production for the applicable year, prorated to deduct payment for any amount of time

that Public Service reasonably determines that the PV System was inoperable or otherwise not producing Renewable Energy during the applicable year.

- q. 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 Contract 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 subsection 5(p)(1)(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 Contract 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 PV Owner/Operator of any obligation to pay liquidated damages under subsection 5(h), above, except as set forth in such subsection.
- r. Termination for Cause. Any breach of a material term or provision of this Contract, or the failure of any representation or warranty to be true and correct during the Term, shall be considered an event of default hereunder, in which case the non-defaulting Party may terminate this Contract; provided, that the non-defaulting Party shall first 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 can be cured but cannot reasonably be cured within such thirty (30)-day period, to commence and thereafter diligently pursue a cure thereof, but in no event shall the defaulting party have longer than one hundred twenty (120) days to cure such default. Notwithstanding the foregoing, Public Service may terminate this Contract immediately upon written notice to PV Owner/Operator if the PV System fails to achieve Substantial Completion within six (6) months following the Target Completion Date.
- s. Dispute Resolution. If any disputes arise concerning this Contract, including but not limited to enforcement of any term or condition of the Contract, 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. Failure of either Party to assert a default or to enforce any term or condition of this Contract 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 Contract. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY

FOR THE RESOLUTION OF ANY DISPUTE ARISING UNDER THIS CONTRACT.

- t. Governing Law. This Contract shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.
- u. Counterparts. This Contract 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 an electronic signature or facsimile copy of a counterpart signed by the other Party will be deemed original and binding.
- v. Title, Risk of Loss, and Warranty of Title. As between the Parties, (i) PV Owner/Operator shall be deemed to be in control of the Renewable Energy output from the PV System up to and until delivery and receipt by Public Service at any net meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at any such net meter, and (ii) PV Owner/Operator shall be deemed to be in control of any RECs associated with the output of the PV System up to and until measurement of such output at the PV Meter for Metered Systems only and at the net meter for Unmetered Systems, and Public Service shall be deemed to be in control of such RECs from and after measurement of such output at the PV Meter for Metered Customers only and at the net meter for Unmetered Customers. Title and risk of loss related to the Renewable Energy shall transfer from PV Owner/Operator to Public Service at any net meter, and title and risk of loss of RECs shall transfer from PV Owner/Operator to Public Service upon measurement at the PV Meter for Metered Customers and at the net meter for Unmetered Customers. PV Owner/Operator warrants and covenants to Public Service that it has and will have at the time of the applicable delivery good and sufficient title to all Renewable Energy and RECs (or sufficient power of agency for Host, which must have good and sufficient title), free and clear of liens and encumbrances, and the ability to transfer good and sufficient title of same to Public Service, as set forth above.
- w. Successors and Assigns; Assignment. This Contract shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and, except as expressly set forth in this Contract, shall not be assigned by PV Owner/Operator without the written consent of Public Service, which consent shall not be unreasonably withheld. Public Service may assign this Contract to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the PV System Address. This Contract shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto.
- x. Information. By executing this Contract, PV Owner/Operator grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by PV Owner/Operator under this Contract 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 PV Owner/Operator's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

- y. 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 Contract.
- z. Amendments or Modifications. No amendment, modification, or change of this Contract shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.
- aa. 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 Contract.
- bb. No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Contract 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.
- cc. Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Contract shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.
- dd. Agreement Subject to Laws and Regulations. This Contract 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 Contract, the services to be performed hereunder or either of the Parties hereto.
- ee. Notices. All notices, reports or other communications provided for in this Contract 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

1800 Larimer St. Suite 1400  
Denver, CO 80202

If to PV Owner/Operator:

{!Premise\_Address\_\_c},                      {!Premise\_City\_\_c},  
{!Premise\_State\_\_c} {!Premise\_Zip\_\_c}  
or at such other address as either party may hereafter  
designate to the other in writing.

- ff. Entire Agreement. This Contract, together with all Exhibits and Schedules attached hereto and any applicable tariff, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from PV Owner/Operator, 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.
- gg. Survival. The provisions of this Contract that logically should survive to give effect to the rights and obligations of the Parties shall survive, including without limitation payment and indemnification obligations with respect to events and circumstances arising prior to termination.

[Signature Page Follows]

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

PV Owner/Operator:

By: {!PV Owner/Operator\_Name\_\_c}

PV Owner/Operator Signature: \_\_\_\_\_[[SertifiSSStamp\_1\_1]]\_\_\_\_\_

Date: \_\_\_\_[[SertifiDate\_1\_1]]\_\_\_\_

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

By:

Signature: \_\_\_\_\_[[SertifiSSStamp\_2]]\_\_\_\_\_

Date: \_\_\_\_[[SertifiDate\_2]]\_\_\_\_

Title: Manager and above, Customer Strategy and Solutions

## **Schedule A**

### Addresses

PV System Address: {!Premise\_Address\_\_c}, {!Premise\_City\_\_c}, {!Premise\_State\_\_c}  
{!Premise\_Zip\_\_c}

Host Address(es): {!Premise\_Address\_\_c}, {!Premise\_City\_\_c}, {!Premise\_State\_\_c}  
{!Premise\_Zip\_\_c}

## Exhibit 1

### Actual System Installation Information

PV Owner/Operator Name: {!PV Owner/Operator\_Name\_\_c}

Installation Address:

{!Premise\_Address\_\_c}, {!Premise\_City\_\_c}, {!Premise\_State\_\_c} {!Premise\_Zip\_\_c}

Installer Name: {!Installer\_Name\_\_c}

Actual Price for PV Installation: \${!Estimated\_Project\_Cost\_\_c}

Date of Town / Municipal / County Inspection: {!Inspection\_Date\_\_c}

Date of PV Installation: {!Net\_Meter\_Install\_Date\_\_c}

REC Price: \${!Incentive\_\_r.Name} per kWh

### System Details:

{!SolarRewardsAssets}

As the installer for this project, I certify that the above-referenced PV equipment was installed at the address identified in this **Exhibit 1**.

**Installer Signature:** \_\_\_\_\_[[SertifiSSStamp\_1\_2]]\_\_\_\_\_

**Date:** \_\_\_\_\_[[SertifiDate\_1\_2]]\_\_\_\_\_

## **Exhibit 2**

### Form of Host Acknowledgment

Application ID: {!Integration\_Opportunity\_ID\_\_c}

## **Solar\*Rewards REC Purchase Contract Low-Income Program**

This Solar\*Rewards REC Purchase Contract (the “Contract”) is made and entered into {!Today\_s\_Date\_\_c}, by and between Public Service Company of Colorado (“Public Service” or “Company”), d/b/a/ Xcel Energy, a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202-5533, and {!PV Owner/Operator\_Name\_\_c} (“PV Owner/Operator”), each of which may be referred to herein individually as a “Party” or collectively as the “Parties.” 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 (the “Rules”), as of the date of this Contract. This Contract implements changes to § 40-2-124, C.R.S. adopted in SB21-261, which among other things allows retail electric service customers to deploy photovoltaic solar systems on noncontiguous property owned or leased by such customer and allows such systems to be sized to supply no more than 200% of the reasonably expected average total consumption at all properties owned or leased by such customer within Public Service’s service territory. All references in this Contract to the size of solar systems in kilowatts (“kW”) mean kW Alternating Current (“AC”) unless otherwise indicated herein.

### **1. Purchase, Sale, and Assignment.**

- a. On the terms and subject to the conditions set forth in this Contract and Per the Non-Unanimous Comprehensive Settlement Agreement in Consolidated Proceeding No.16AL-0048E dated August 15, 2016, PV Owner/Operator agrees to and hereby does assign all Renewable Energy Credits (“RECs”) to the Colorado Energy Office (“CEO”) and Public Service agrees to purchase all PV Owner/Operator-assigned RECs from CEO for the Term hereof.
  - b. For purposes of this Contract: (i) “PV System” means the photovoltaic solar system installed at the address specified in **Schedule A** (“PV System Address”) with a rated AC nameplate capacity of {!NamePlate\_Capacity\_kW\_\_c} kW, which may or may not be installed in conjunction with an energy storage system, electric vehicle charging system or other distributed energy resource; (ii) “Host Address” and “Host Addresses” refer to the addresses set forth in **Schedule A**; (iii) “Tenant” refers to a Host’s tenant or other authorized possessor of and customer of record at a Host Address; and (iv) “Host” refers to either PV Owner/Operator or a third party that has authorized PV Owner/Operator to enter into this Contract and perform the obligations of “PV Owner/Operator” hereunder, and in either case is the person or entity that is a retail electric service customer of Public Service (or whose Tenant is the retail electric service customer) and that owns or leases each Host Address.
2. **Purchase Price.** The purchase price for the RECs hereunder shall be expressed in cents per kilowatt hour (“kWh”), with one REC being generated for each megawatt hour (“MWh”) of power generated by the PV System. Public Service shall pay PV Owner/Operator the

price of **\$\$!Incentive\_\_r.Name} per kWh** of power generated by the PV System in exchange for all RECs attributable to such power. Such purchase price shall be payable in accordance with this section 2 and subsection 5(k) below. Public Service may require a PV Meter for all PV Systems greater than 10 kW DC (direct current), in which case PV Owner/Operator must pay the PV Meter charges as set forth in this Agreement and the PV System will be considered a Metered System for purposes of this Agreement. PV Owners/Operators with PV Systems of 10 kW DC (direct current) or less are not required to have a PV Meter, but may request a PV Meter from Public Service, in which case PV Owner/Operator must pay the PV Meter charges as set forth in this Contract and the PV System will be considered a Metered System for purposes of this Contract. REC payments shall be made to PV Owner/Operator until the 240th monthly or 20th annual REC payment, as applicable (or date of monthly or annual payment even if the owed amount is zero) hereunder (the "Payment Limit"), after which no further REC payments shall be made. Notwithstanding any provision (including subsection 5(l)) stating that PV Owner/Operator will receive an annual payment, Public Service may, in its sole discretion and in accordance with Decision No. C20-0606 in Proceeding No. 20V-0297E of the Colorado Public Utilities Commission (the "CPUC Decision") or other applicable CPUC rules and decisions, elect to make monthly payments to PV Owner/Operator; provided, that in such instance, Public Service may in its sole discretion later switch to making annual payments to PV Owner/Operator, in which case (A) each monthly payment to PV Owner/Operator shall constitute a prorated portion of one (1) annual payment for purposes of calculating the Payment Limit and (B) Public Service may prorate any annual payments to account for such monthly payments made during the Term. For purposes of this Contract "PV Meter" means a second meter at the PV System or a customer meter capable of recording the PV System's generation, and in either case, without any energy storage system (except an energy storage system exclusively charged by the PV System) on the PV System side of the meter.

3. Incorporation of Tariff. The Parties shall abide by, and this Contract shall be subject to, the Company's applicable electric tariffs related to photovoltaic systems or net metering, as applicable, as on file with the Colorado Public Utilities Commission ("CPUC") and as they may be revised from time to time. In the event of any conflict between the terms of this Contract and Company's electric tariff, the provisions of the tariff shall control.
4. Representations, Warranties, and Covenants. PV Owner/Operator hereby makes the following representations as of the date hereof, and warranties and covenants to Public Service as of each delivery of RECs to Public Service during the Term:
  - a. The person signing this Contract on behalf of PV Owner/Operator is individually authorized and competent to sign this Contract and to bind PV Owner/Operator to the terms hereof.
  - b. PV Owner/Operator or Host will own the PV System, the Host or Host's Tenant is the person or entity in whose name electric service is listed at each Host Address, and the PV System will be located at the PV System Address.

- c. The primary business at each Host Address is not and will not be the generation of electricity for retail or wholesale sale.
- d. The proposed PV System nameplate capacity in kW AC at the PV System Address does not and will not exceed the service entrance capacity at the PV System Address.
- e. The PV System is and will be sized to supply no more than two hundred percent (200%) of the aggregate reasonably expected average annual consumption of electricity by the Host at all Host Addresses. PV Owner/Operator acknowledges that Public Service's Solar\*Rewards Program is only available to PV systems where the estimated annual generation, as determined via PVWATTS, is not more than 200% of the reasonably expected average annual total consumption of electricity at all properties owned or leased by Host within Public Service's service territory and acknowledges that only properties (i) that are owned or leased by Host and (ii) that are identified as Host Addresses in **Schedule A** will be included in estimated consumption for sizing the PV System. PV Owner/Operator represents that it has no present intention to transfer its ownership or rights in any Host Address, or otherwise employ any means to circumvent the sizing limitations in this subsection 4(e) and does not presently have reason anticipate a change in such intention.
- f. Whether or not PV Owner/Operator is the Host, PV Owner/Operator represents as of the date hereof, and warrants and covenants throughout the Term, that, for each Host Address, the Host or Host's Tenant is and shall be at all times a retail electric service customer of Public Service at such Host Address, the Host Address is and shall be at all times within Public Service's electric service territory and the Host Address is and shall be at all times owned or leased by the Host (subject to cure by delivering a new Host Acknowledgement pursuant to subsection 4(g)).
- g. If PV Owner/Operator is not the Host, PV Owner/Operator represents as of the date hereof, and warrants and covenants throughout the Term, that (i) it is and shall be at all times duly authorized by the Host to own and/or operate (as applicable) the PV System at the PV System Address and to perform any and all obligations of PV Owner/Operator and acts permitted to be performed by PV Owner/Operator under this Contract; (ii) the PV System is and shall be at all times operated for the benefit of the Host; and (iii) it shall notify Public Service immediately if at any point during the Term of this Contract any of the foregoing is not true and correct in all respects. PV Owner/Operator shall obtain a Host Acknowledgement in substantially the form attached hereto as **Exhibit 2** prior to the execution of this Contract. If PV Owner/Operator fails to obtain a Host Acknowledgement prior to the execution of this Contract, or if at any time during the Term such Host Acknowledgement is not true and correct in all respects or the foregoing warranties are not true and correct in all respects, Public Service may terminate this Contract immediately upon notice

to PV Owner/Operator. If at any point during the Term the Host transfers ownership of the PV System Address to a new Host or a new Host leases the PV System Address, PV Owner/Operator shall cause the new Host to execute and deliver a Host Acknowledgement in substantially the form attached hereto as **Exhibit 2** within thirty (30) days of such transfer. If the new Host fails to timely execute and deliver such a Host Acknowledgement to Public Service, Public Service may terminate this Contract immediately upon notice to PV Owner/Operator.

5. Terms and Conditions.

- a. PV Owner/Operator shall ensure that the PV System equipment installed at the PV System Address is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.
- b. The PV Owner/Operator shall cause the PV System to achieve Substantial Completion within (i) 18 months following the Application Date if the PV System is 1 megawatt ("MW") or less, or (ii) 18 months following the execution of the Interconnection Agreement if the PV System is larger than 1 MW (such dates, as applicable, the "Target Completion Date"). Public Service will automatically grant a six month extension following the Target Completion Date, provided that: (i) for PV Systems 1 MW or less, the PV System Owner/Operator will forfeit the deposit to the Renewable Energy Standard Adjustment ("RESA") account in full one day after the Target Completion Date; and (ii) for PV Systems larger than one MW, the PV Owner/Operator will forfeit the deposit to the RESA account in an amount equal to 1/180th of the deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the deposit. For purposes of this Contract: (i) "Substantial Completion" means the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the PV Owner/Operator having requested a scheduled witness test for the PV System, if one is required; (ii) "Application Date" means the date a PV System application was submitted and the application deposit is paid; and (iii) "Renewable Energy" means energy generated from renewable energy resources including renewable distributed generation.
- c. "Date of Commercial Operation" shall be the date that PV Owner/Operator has met all of the criteria of subsection 5(b) above and all necessary metering has been installed or reprogrammed.
- d. This Contract 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 (the "Term").

- e. The PV System must qualify as Retail Renewable Distributed Generation, at all times during the Term of this Contract. If at any time during the Term the PV System Address is no longer located within Public Service's service territory, this Contract will automatically terminate. If the PV System no longer qualifies as Retail Renewable Distributed Generation, this Contract will automatically terminate.
- f. This Contract may be assigned or deemed assigned as follows. If the PV Owner/Operator is no longer the owner or authorized operator of the PV System, whether in connection with a disposition of the PV System Address, Host or Host's Tenant ceasing to be the Host at the PV System Address, a termination of PV Owner/Operator's authorization by Host or otherwise, but in each case, the PV System remains in operation at the PV System Address, (i) the new customer of record at the PV System Address (or new owner or authorized operator of the PV System, if different from the new customer of record) may assume this Contract in a form satisfactory to Public Service and at the original REC purchase price set forth in Section 2 of this Contract, and complete any required Interconnection Agreement process, in which case, this Contract will be deemed assigned by the PV Owner/Operator with no further signature or other action required by the PV Owner/Operator, or (ii) Public Service may deem this Contract terminated (without requirement of notice) if the new customer of record does not take the actions in the foregoing clause (i) within a reasonable time, as determined by Public Service, but no less than thirty (30) days. PV Owner/Operator represents and warrants that any assignment to and assumption of its rights and obligations under this Agreement shall not breach any agreement or arrangement between PV Owner/Operator and Host. If the new customer of record does not assume this Contract or enter into a new Solar\*Rewards REC Purchase Contract for the PV System, PV Owner/Operator shall, upon the request of Public Service in its sole discretion, make any liquidated damages payments required in accordance with subsection 5(h).
- g. The PV System shall be installed as part of Public Service's Solar\*Rewards Program and subject to all program rules and policies. If the PV System is using an electric vehicle charging inverter or an energy storage system, or is similarly serving load behind the PV Meter, PV Owner/Operator may experience a loss in REC production. Public Service will only pay (i) for all Metered Systems, for RECs registered on the PV Meter or the PV Meter as adjusted by additional metering if appropriate, or (ii) for all Unmetered Systems, for RECs based on the Estimated Annual Production for the applicable year in accordance with CPUC Decision No. C20-0606 in Proceeding No. 20V-0297E (the "CPUC Decision") and other applicable CPUC rules and decisions. By signing this Contract, PV Owner/Operator acknowledges this potential loss of RECs and agrees to the foregoing limitation on Public Service's obligation to pay for RECs. To the extent that the PV System is attached to an energy storage system, Public Service will not pay the REC purchase price set forth in section 2 of this Contract for metered power

discharged by the electric vehicle charging inverter, energy storage system unless that system or device is charged only by (and is interconnected such that technically it can only be charged by) the PV System.

- h. PV Owner/Operator 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 Contract. If during the Term of this Contract the PV System or any of the individual components of the system should be damaged or destroyed or otherwise fall into disrepair or fail to remain operational, PV Owner/Operator shall promptly repair or replace the equipment to its original specifications, tilt and orientation, or remedy such other failure to operate, at PV Owner/Operator'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 RECs generated prior to such damage, destruction or failure to operate. Public Service shall have the right, exercisable at its sole option, to terminate this Contract, with no further obligation of the Parties to perform hereunder following the effective date of such termination, (i) upon thirty (30) days' written notice if the time period for repair or replacement is reasonably anticipated to exceed one hundred eighty (180) days, or (ii) immediately upon written notice at any time before the PV System has been made fully operational again if the PV System has been out of operation for more than ninety (90) consecutive days. If (x) this Contract is terminated pursuant to this subsection 5(h) (except where the damage, destruction or other failure of the PV System to operate is the result of Force Majeure), or is terminated pursuant to subsection 5(r), before the 240th monthly or 20th annual REC payment, as applicable, as provided for in section 2 above, and (y) the combined AC nameplate capacity of the PV System located at the PV System Address and subject to a Solar\*Rewards REC Purchase Contract is one (1) MW or greater, then PV Owner/Operator shall pay Public Service liquidated damages in an amount equal to (i) the estimated annual generation of the PV System, as determined via PVWATTS and reflected in the attached **Exhibit 1**, after applying an annual cell degradation factor of one-half percent (0.5%) each year (compounded) after the first year, multiplied by (ii) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (iii) the positive difference resulting, if any, by subtracting the per kWh REC purchase price set forth in section 2 above from the weighted-average per kWh price for RECs based on the winning bids under Public Service's most recent request for proposals under its Solar\*Rewards program for onsite solar photovoltaic systems. In no event shall the foregoing calculation be deemed to result in a negative number or obligate Public Service to make any payment to PV Owner/Operator. In making such determination and applying the degradation factor, annual generation shall be determined for each 12-month period effective with the first day of the billing period following the Date of Commercial Operation and each anniversary thereof.
- i. Any excess Renewable Energy generated by the PV System at the PV System Address and not used or stored onsite by Host or Host's Tenant shall be delivered

to Public Service. The Host or Host's Tenant will receive compensation for this excess Renewable Energy via "net metering" as set forth in the Company's Electric Tariff or other applicable tariffs on file with the CPUC and in effect from time to time.

- j. As between Public Service and PV Owner/Operator, PV Owner/Operator will be responsible for paying all taxes imposed by any governmental authority on the PV System and taxes imposed on any Host Address, including real property taxes and any increases therein related to the improvement of real property by the existence of the PV System at the PV System Address, and Public Service will have no liability for any of the foregoing.
- k. REC payments to PV Owner/Operator will be based on the following:
  - 1. *Frequency of Payment.* Public Service may make REC payments in monthly or annual installments, at Public Service's discretion.
  - 2. *Method of Payment.* Public Service may make REC payments to PV Owner/Operator either in the form of a check or, if PV Owner/Operator provides the information required in Public Service's Automated Clearing House ("ACH") enrollment form, by ACH, at Public Service's discretion.
  - 3. *System Metering.*
    - i. For PV Systems with a PV Meter ("Metered Systems"), REC payments will be based on the metered energy recorded by the PV Meter at the PV System Address and upon Public Service's receipt of RECs generated by the PV System in the immediately preceding month or year, as applicable. Public Service shall install, own, operate and read the PV Meters and PV Owner/Operator shall reimburse Public Service for the cost of installing the PV Meters. Public Service shall be entitled to collect such reimbursement of the PV Meter installation costs by deducting all or a portion of such costs from the monthly REC payment to PV Owner/Operator until fully collected, or as otherwise provided for in the Company's tariff. Any time after the 20th anniversary of the Date of Commercial Operation, PV Owner/Operator may request and pay for, at applicable tariff rates, removal of the PV Meters. Company shall cease assessing the PV meter charge upon removal of the meters.
    - ii. For PV Systems without a PV Meter ("Unmetered Systems"), REC payments will be based upon the annual production of the PV System estimated using PVWATTS ("Estimated Annual Production"), in accordance with the CPUC Decision and other applicable CPUC rules and orders, which amount may be prorated for any partial year. PV Owner/Operator acknowledges that (i) the production for an Unmetered System is an estimate based on the expected output of the PV System, (ii) the PV System may produce

more or less energy than estimated, and (iii) PV Owner/Operator shall only be entitled to payment for the Estimated Annual Production, in accordance with the CPUC Decision and other applicable CPUC rules and orders, subject to adjustment as set forth in this Contract.

- l. Nothing in this Contract 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.
- m. 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 PV Owner/Operator or Host 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 tax, financial or legal consequences, if any, to PV Owner/Operator or Host with respect to the installation of the PV System or the production and sale of Renewable Energy or RECs, and PV Owner/Operator is urged to seek professional advice regarding these issues.
- n. Except for PV Owners/Operators that are a Governmental Entity, PV Owner/Operator 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. As used in this Contract, "Governmental Entity" means any federal, state or local government, board, department, agency, special district, instrumentality, or other similar entity entitled to rely on the rights, immunities or protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time.
- o. Definition of Force Majeure.
  1. The term "Force Majeure", as used in this Contract, 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, hail 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 Renewable Energy and associated RECs in commercial quantities; long-term material changes in Renewable Energy flows across the PV System caused by climatic change, lightning, fire, ice

storms, sabotage, vandalism caused by others despite reasonable efforts of PV Owner/Operator 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.

2. The term Force Majeure does not include (i) any acts or omissions of any third party (including Host or Host's Tenant), including, without limitation, any vendor, materialman, customer or supplier of PV Owner/Operator or Host, 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, hail 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 PV Owner/Operator's supplies, or that affect demand or price for any of Public Service's or PV Owner/Operator's products.

p. Applicability of Force Majeure.

1. Except as expressly set forth in this Contract, neither Party shall be responsible or liable for any delay or failure in its performance under this Contract, 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 Contract, that Party shall give the other Party written notice to that effect.
2. Except as otherwise expressly provided for in this Contract, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Contract (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 RECs under this Contract except (i) for Metered Systems, for actual production as measured by the metering provisions of this Contract or to accept or compensate PV Owner/Operator for excess Renewable Energy under Public Service's net metering or other tariff except for Renewable Energy delivered to Public Service's electric grid as measured by a net meter, or (ii) for Unmetered Systems, for the Estimated Annual Production for the applicable year, prorated to deduct payment for any amount of time that Public Service reasonably determines that the PV System was inoperable or otherwise not producing Renewable Energy during the applicable year.
- q. 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 Contract 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 subsection 5(p)(1)(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 Contract 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 PV Owner/Operator of any obligation to pay liquidated damages under subsection 5(h), above, except as set forth in such subsection.
- r. Termination for Cause. Any breach of a material term or provision of this Contract, or the failure of any representation or warranty to be true and correct during the Term, shall be considered an event of default hereunder, in which case the non-defaulting Party may terminate this Contract; provided, that the non-defaulting Party shall first 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 can be cured but cannot reasonably be cured within such thirty (30)-day period, to commence and thereafter diligently pursue a cure thereof, but in no event shall the defaulting party have longer than one hundred twenty (120) days to cure such default. Notwithstanding the foregoing, Public Service may terminate this Contract immediately upon written notice to PV Owner/Operator if the PV System fails to achieve Substantial Completion within six (6) months following the Target Completion Date.

- s. Dispute Resolution. If any disputes arise concerning this Contract, including but not limited to enforcement of any term or condition of the Contract, 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. Failure of either Party to assert a default or to enforce any term or condition of this Contract 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 Contract. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY FOR THE RESOLUTION OF ANY DISPUTE ARISING UNDER THIS CONTRACT.
- t. Governing Law. This Contract shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.
- u. Counterparts. This Contract 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 an electronic signature or facsimile copy of a counterpart signed by the other Party will be deemed original and binding.
- v. Title, Risk of Loss, and Warranty of Title. As between the Parties, (i) PV Owner/Operator shall be deemed to be in control of the Renewable Energy output from the PV System up to and until delivery and receipt by Public Service at any net meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at any such net meter, and (ii) PV Owner/Operator shall be deemed to be in control of any RECs associated with the output of the PV System up to and until measurement of such output at the PV Meter for Metered Systems only and at the net meter for Unmetered Systems, and Public Service shall be deemed to be in control of such RECs from and after measurement of such output at the PV Meter for Metered Customers only and at the net meter for Unmetered Customers. Title and risk of loss related to the Renewable Energy shall transfer from PV Owner/Operator to Public Service at any net meter, and title and risk of loss of RECs shall transfer from PV Owner/Operator to Public Service upon measurement at the PV Meter for Metered Customers and at the net meter for Unmetered Customers. PV Owner/Operator warrants and covenants to Public Service that it has and will have at the time of the applicable delivery good and

sufficient title to all Renewable Energy and RECs (or sufficient power of agency for Host, which must have good and sufficient title), free and clear of liens and encumbrances, and the ability to transfer good and sufficient title of same to Public Service, as set forth above.

- w. Successors and Assigns; Assignment. This Contract shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, subject to the rights of CEO pursuant to subsection 1(a), and, except as expressly set forth in this Contract, shall not be assigned by PV Owner/Operator without the written consent of Public Service, which consent shall not be unreasonably withheld. Public Service may assign this Contract to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the PV System Address. This Contract shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto.
- x. Information. By executing this Contract, PV Owner/Operator grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by PV Owner/Operator under this Contract 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 PV Owner/Operator's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.
- y. 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 Contract.
- z. Amendments or Modifications. No amendment, modification, or change of this Contract shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.
- aa. 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 Contract.
- bb. No Third-Party Beneficiaries Other than CEO. Except for CEO and as otherwise specifically provided herein, this Contract 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. CEO shall be a third-party beneficiary of this Contract, solely for purposes of subsection 1(a).

- cc. Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Contract shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.
- dd. Agreement Subject to Laws and Regulations. This Contract 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 Contract, the services to be performed hereunder or either of the Parties hereto.
- ee. Notices. All notices, reports or other communications provided for in this Contract 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  
1800 Larimer St. Suite 1400  
Denver, CO 80202
- If to PV Owner/Operator:  
{!Premise\_Address\_\_c},                      {!Premise\_City\_\_c},  
{!Premise\_State\_\_c} {!Premise\_Zip\_\_c}  
or at such other address as either party may hereafter  
designate to the other in writing.
- ff. Entire Agreement. This Contract, together with all Exhibits and Schedules attached hereto and any applicable tariff, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from PV Owner/Operator, 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.
- gg. Survival. The provisions of this Contract that logically should survive to give effect to the rights and obligations of the Parties shall survive, including without limitation payment and indemnification obligations with respect to events and circumstances arising prior to termination.

[Signature Page Follows]

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

PV Owner/Operator:

By: {!PV Owner/Operator\_Name\_\_c}

PV Owner/Operator Signature: \_\_\_\_\_[[SertifiSStamp\_1\_1]]\_\_\_\_\_

Date: \_\_\_\_[[SertifiDate\_1\_1]]\_\_\_\_

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

By:

Signature: \_\_\_\_\_[[SertifiSStamp\_2]]\_\_\_\_\_

Date: \_\_\_\_[[SertifiDate\_2]]\_\_\_\_

Title: Manager and above, Customer Strategy and Solutions

REC Contract:2022

[Signature Page to REC Purchase Agreement]

## **Schedule A**

### Addresses

PV System Address: {!Premise\_Address\_\_c}, {!Premise\_City\_\_c}, {!Premise\_State\_\_c}  
{!Premise\_Zip\_\_c}

Host Address(es): {!Premise\_Address\_\_c}, {!Premise\_City\_\_c}, {!Premise\_State\_\_c}  
{!Premise\_Zip\_\_c}

## **Exhibit 1**

### Actual System Installation Information

PV Owner/Operator Name: {!PV Owner/Operator\_Name\_\_c}

Installation Address:

{!Premise\_Address\_\_c}, {!Premise\_City\_\_c}, {!Premise\_State\_\_c} {!Premise\_Zip\_\_c}

Installer Name: {!Installer\_Name\_\_c}

Actual Price for PV Installation: \${!Estimated\_Project\_Cost\_\_c}

Date of Town / Municipal / County Inspection: {!Inspection\_Date\_\_c}

Date of PV Installation: {!Net\_Meter\_Install\_Date\_\_c}

REC Price: \${!Incentive\_\_r.Name} per kWh

#### **System Details:**

{!\$SolarRewardsAssets}

As the installer for this project, I certify that the above-referenced PV equipment was installed at the address identified in this **Exhibit 1**.

**Installer Signature:** \_\_\_\_\_[[SertifiSSStamp\_1\_2]]\_\_\_\_\_

**Date:** \_\_\_\_\_[[SertifiDate\_1\_2]]\_\_\_\_\_

## **Exhibit 2**

### Form of Host Acknowledgment

REC Contract:2022

Exhibit 2

## **Solar\*Rewards Battery Connect Agreement REC Purchase and Battery Energy Storage Systems**

This Solar\*Rewards Battery Connect Agreement (the “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Public Service Company of Colorado (“Public Service” or “Company”), d/b/a/ Xcel Energy, a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and \_\_\_\_\_ (“System Owner/Operator”), whose address is \_\_\_\_\_ each of which may be referred to herein individually as a “Party” or collectively as the “Parties.” 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 (the “Rules”), as of the date of this Agreement. All references in this Agreement to the size of solar systems in kilowatts (“kW”) mean kW Alternating Current (“AC”) unless otherwise indicated herein. For purposes of this Agreement, “PV System Address” means the following:

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

### **1. Renewable Energy Credits.**

a. Purchase and Sale of RECs. On the terms and subject to the conditions set forth in this Agreement, System Owner/Operator agrees to sell, and Public Service agrees to purchase Renewable Energy Credits (“RECs”) as described herein. The PV System will have a rated AC nameplate capacity of {!NamePlate\_Capacity\_kW\_\_c} kW. Public Service agrees to purchase all RECs generated by the PV System for the Term hereof. For purposes of this Agreement: (i) “PV System” means the photovoltaic solar system installed at the PV System Address, which is installed in conjunction with a Battery Energy Storage System (“BESS”), and may or may not be installed in conjunction with any electric vehicle charging system or other distributed energy resource; (ii) “Tenant” refers to a Host’s tenant or other authorized possessor of and customer of record at the PV System Address; and (iii) “Host” refers to either System Owner/Operator or a third party that has authorized System Owner/Operator to enter into this Agreement and perform the obligations of “System Owner/Operator” hereunder, and in either case is the person or entity that is a retail electric service customer of Public Service (or whose Tenant is the retail electric service customer) and that owns or leases the PV System Address.

b. REC Purchase Price. The purchase price for the RECs hereunder shall be expressed in cents per kilowatt hour (“kWh”), with one REC being generated for each megawatt hour (“MWh”) of power generated by the PV System (or discharged in accordance with subsection 1(d)). Public Service shall pay System Owner/Operator the price of \$**{!Incentive\_\_r.Name} per kWh** of power generated by the PV System in exchange for all RECs attributable to such power. Such purchase price shall be payable in accordance with this subsection 1(b) and subsection 1(c) below. Public Service may require a PV Meter for all PV Systems greater than 10 kW DC (direct current), in which case System Owner/Operator must pay the PV Meter charges as set forth in this Agreement and the PV System will be considered a Metered System for purposes

of this Agreement. System Owner/Operators with PV Systems of 10 kW DC (direct current) or less are not required to have a PV Meter, but may request a PV Meter from Public Service, in which case System Owner/Operator must pay the PV Meter charges as set forth in this Agreement and the PV System will be considered a Metered System for purposes of this Agreement. REC payments shall be made to System Owner/Operator until the 240th monthly or 20th annual REC payment, as applicable (or date of monthly or annual payment even if the owed amount is zero) hereunder (the “Payment Limit”), after which no further REC payments shall be made. Notwithstanding any provision stating that System Owner/Operator will receive an annual payment, Public Service may, in its sole discretion and in accordance with Decision No. C20-0606 in Proceeding No. 20V-0297E of the Colorado Public Utilities Commission (the “CPUC Decision”) or other applicable CPUC rules and decisions, elect to make monthly payments to System Owner/Operator; provided, that in such instance, Public Service may in its sole discretion later switch to making annual payments to System Owner/Operator, in which case (A) each monthly payment to System Owner/Operator shall constitute a prorated portion of 1 annual payment for purposes of calculating the Payment Limit and (B) Public Service may prorate any annual payments to account for such monthly payments made during the Term. For purposes of this Agreement “PV Meter” means a second meter at the PV System or a customer meter capable of recording the PV System’s generation, and in either case, without any energy storage system (except an energy storage system exclusively charged by the PV System) on the PV System side of the meter.

c. REC Payments. REC payments to System Owner/Operator will be based on the following:

i. Frequency of Payment. Public Service may make REC payments in monthly or annual installments, at Public Service’s discretion.

ii. Method of Payment. Public Service may make REC payments to System Owner/Operator either in the form of a check or, if System Owner/Operator provides the information required in Public Service’s Automated Clearing House (“ACH”) enrollment form, by ACH, at Public Service’s discretion.

iii. System Metering.

A. For PV Systems with a PV Meter (“Metered Systems”), REC payments will be based on the metered energy recorded by the PV Meter at the PV System Address and upon Public Service’s corresponding receipt of RECs generated by the PV System in the immediately preceding month or year, as applicable. Public Service shall install, own, operate and read the PV Meters and System Owner/Operator shall reimburse Public Service for the cost of installing the PV Meters. Public Service shall be entitled to collect such reimbursement of the PV Meter installation costs by deducting all or a portion of such costs from the monthly REC payment to System Owner/Operator until fully collected, or as otherwise provided for in the Company’s tariff. Any time after the 20th anniversary of the Date of Commercial Operation, System Owner/Operator may request and pay for, at applicable tariff rates, removal of the PV Meters. Company shall cease assessing the PV meter charge upon removal of the meters.

B. For PV Systems without a PV Meter (“Unmetered Systems”), REC payments will be based upon the annual production of the PV System estimated using PVWATTS (“Estimated Annual Production”), in accordance with the CPUC Decision and other applicable CPUC rules and orders, which amount may be prorated for any partial year. System Owner/Operator acknowledges that (i) the production for an Unmetered System is an estimate based on the expected output of the PV System, (ii) the PV System may produce more or less energy than estimated, and (iii) System Owner/Operator shall only be entitled to payment for the Estimated Annual Production, in accordance with the CPUC Decision and other applicable CPUC rules and orders, subject to adjustment as set forth in this Agreement.

d. Stored Energy RECs. If the PV System is using a BESS, electric vehicle charging inverter, or is similarly serving load behind the PV Meter, System Owner/Operator may experience a loss in REC production. Public Service will only pay (i) for all Metered Systems, for RECs registered on the PV Meter or the PV Meter as adjusted by additional metering if appropriate, or (ii) for all Unmetered Systems, for RECs based on the Estimated Annual Production for the applicable year in accordance with CPUC Decision No. C20-0606 in Proceeding No. 20V-0297E (the “CPUC Decision”) and other applicable CPUC rules and decisions. By signing this Agreement, System Owner/Operator acknowledges this potential loss of RECs and agrees to the foregoing limitation on Public Service’s obligation to pay for RECs. To the extent that the PV System is attached to a BESS or electric vehicle charging inverter, Public Service will not pay the REC purchase price set forth in subsection 1(b) for metered power discharged by the BESS or electric vehicle charging inverter or the BESS unless such BESS or electric vehicle charging inverter is charged only by the PV System, subject to subsection 3(f).

## 2. PV System.

a. Any excess Renewable Energy generated by the PV System at the PV System Address and not used or stored onsite by Host or Host’s Tenant shall be delivered to Public Service. The Host or Host’s Tenant will receive compensation for this excess Renewable Energy via “net metering” as set forth in the Company’s Electric Tariff or other applicable tariffs on file with the CPUC and in effect from time to time.

b. The PV System must qualify as Retail Renewable Distributed Generation, at all times during the Term of this Agreement. If at any time during the Term the PV System Address is no longer located within Public Service’s service territory, this Agreement will automatically terminate. If the PV System no longer qualifies as Retail Renewable Distributed Generation, this Agreement will automatically terminate.

## 3. Use of BESS by Public Service.

a. BESS Incentive Payment. On the terms and subject to the conditions set forth in this Agreement, Public Service agrees to pay to System Owner/Operator an upfront incentive for the BESS in the amount of \$125 per kilowatt of installed capacity (“BESS Incentive”). The total amount of the BESS Incentive will be capped at \$1,250 where Host is a residential customer and \$2,500 where Host is a small commercial customer. The BESS Incentive will be paid one time to System Owner/Operator and will be issued 60 days after the Date of Commercial Operation.

b. Amount of BESS Energy. System Owner/Operator shall make the BESS available to Public Service throughout the Term and grants to Public Service the right to use up to 60% of the nameplate storage capacity (in kWh) of the BESS at the PV System Address for each Event and for up to 40 Events per year during the Term. System Owner/Operator consents to the management, operation, control, and issuance of commands to the BESS by Public Service through the BESS dispatch software, whether through the BESS Provider's software platform or through any similar platform as determined by Public Service. System Owner/Operator shall not override Public Service's instructions for the BESS to charge and discharge, except to access energy during a grid outage pursuant to subsection 3(d) below. System Owner/Operator acknowledges that the BESS is subject to round-trip efficiency ("RTE") losses, whereby each time the BESS is charged and discharged there is a loss of energy, and that any additional electricity costs that the Host incurs during the Term because of RTE losses are the sole responsibility of the Host. For the purposes of this Agreement, "BESS Provider" refers to an entity approved by Public Service to be the operator of (or to provide a software platform or similar platform to operate) a qualified BESS.

c. BESS Charging. Except for charging by Public Service permitted under subsection 3(f), System Owner/Operator will ensure that the BESS is charged using only on-site solar energy, such charging contingent upon solar availability.

d. Availability of BESS Energy for Host. If a grid outage affects the PV System Address, all energy available in the BESS at that time will be made available to Host without limitation and free from Public Service's use during the grid outage. System Owner/Operator acknowledges that Public Service is under no obligation to maintain any minimum level of energy in the BESS. System Owner/Operator acknowledges that the availability of BESS energy for the Host is contingent upon several factors, and may be affected by on-site solar production, depth of discharge that the BESS can accommodate, equipment failure, how Host uses the BESS, and other factors outside of the BESS Provider's or Public Service's control.

e. Events. Public Service will remotely manage and automatically adjust the BESS only when an Event is scheduled. Each Event will consist of (i) a 24-hour charging period beginning when Public Service calls an Event and (ii) a discharge period lasting for up to 4 hours and occurring immediately following the end of the charging period. System Owner/Operator shall not discharge the BESS or otherwise override Public Service's instructions for the BESS during or with respect to an Event. Public Service will not call more than one event per calendar day. As an example of an Event but without limiting potential Events that Public Service may schedule, Public Service may schedule the BESS to charge during the middle of the day and discharge the BESS in early evening. System Owner/Operator may opt-out of up to 2 Events per year upon notice to Public Service within [ ] hours of Public Service's notice that an event is scheduled.

f. Grid Charging. Notwithstanding anything in this Agreement to the contrary, where a qualified BESS is technically capable of being charged with energy from the electric grid through a storm watch mode or similar feature, Public Service, but not System Owner/Operator or Host, shall be entitled to schedule the BESS to charge from the electric grid, as may be permitted in accordance with applicable law. In the event that Public Service charges the BESS from the

electric grid, such energy, when discharged from the BESS, will in no event be deemed to generate any associated RECs or to entitle System Owner/Operator to any REC payment.

g. BESS Termination and Fee.

i. If within 5 years of the Date of Commercial Operation the BESS is out of operation or otherwise unavailable for use by Public Service for more than 60 days, Public Service may terminate this Agreement upon notice to System Owner/Operator (the date of such notice, the “Early Termination Date”). If the Early Termination Date occurs within 365 days of the Date of Commercial Operation, System Owner/Operator must pay a fee to Public Service (the “BESS Termination Fee”), which is the unearned portion of the BESS Incentive. The BESS Termination Fee will be calculated as follows:  $(1 - ([\text{the number of days from Date of Commercial Operation to Early Termination Date}] / 365) * \text{BESS Incentive})$ . The BESS Termination Fee will be assessed to System Owner/Operator, or, if System Owner/Operator is a retail electric service customer of Public Service, on System Owner/Operator’s electricity bill as a special charge. No BESS Termination Fee will be charged to System Owner/Operator if the Early Termination Date occurs more 365 days after the Date of Commercial Operation. Following the Early Termination Date and payment of the BESS Termination Fee by System Owner/Operator, if any, all obligations of the Parties shall terminate, except as may survive in accordance with the terms hereof. Notwithstanding the foregoing, Public Service may not terminate this Agreement and System Owner/Operator will not be required to pay the Early Termination Fee under this subsection 3(g)(i) if the BESS fails or otherwise ceases to operate within 5 years of the Date of Commercial Operation and System Owner/Operator provides sufficient evidence to Public Service that such failure or cessation in operation is not the result of System Owner/Operator’s action, inaction, or otherwise a result of breach of this Agreement by System Owner/Operator, in which case (A) the portions of this Agreement concerning the BESS shall terminate with respect to the BESS, and (B) all other terms of this Agreement, including those terms relating to the PV System and the RECs, shall remain in full force and effect for the remainder of the Term.

ii. If Public Service terminates this Agreement in accordance with subsection 4(b) below at any time prior to the Date of Commercial Operation, System Owner/Operator must pay Public Service the BESS Termination Fee equal to the total BESS Incentive.

4. Term and Termination.

a. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a term of 20 years from and after the Date of Commercial Operation (the “Term”).

b. Any breach of a material term of this Agreement, or the failure of any representation or warranty to be true and correct during the Term, shall be considered an event of default hereunder, in which case the non-defaulting Party may terminate this Agreement; provided, that the non-defaulting Party shall first 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 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 can be cured but cannot reasonably be cured within such 30-day period, to commence and

thereafter diligently pursue a cure thereof, but in no event shall the defaulting party have longer than 60 days to cure such default. Notwithstanding the foregoing and without limiting Public Service's other rights hereunder, Public Service may terminate this Agreement immediately upon written notice to System Owner/Operator if the PV System and BESS fail to achieve Substantial Completion within 6 months following the Target Completion Date.

c. If after 5 years from the Date of Commercial Operation the BESS is out of operation or otherwise unavailable for use by Public Service for any reason, either Party may terminate this Agreement solely with respect to the BESS. In the event of such termination, all other terms of this Agreement, including those terms relating to the PV System and the RECs, shall remain in full force and effect for the remainder of the Term.

5. Incorporation of Tariff. The Parties shall abide by, and this Agreement shall be subject to, the Company's electric tariffs related to photovoltaic systems and net metering, as applicable, as on file with the Colorado Public Utilities Commission and as they may be revised from time to time. In the event of any conflict between the terms of this Agreement and Company's electric tariff, the provisions of the tariff shall control.

6. Representations and Warranties. System Owner/Operator hereby makes the following representations as of the date hereof, and warranties and covenants to Public Service during the Term:

a. The person signing this Agreement on behalf of System Owner/Operator is individually authorized and competent to sign this Agreement and to bind System Owner/Operator to the terms hereof.

b. The PV System and the BESS will be installed at the PV System Address.

c. System Owner/Operator or Host will own the PV System.

d. System Owner/Operator or Host will own or lease the BESS. If the BESS is leased, System Owner/Operator represents and warrants that the owner of the BESS has permitted System Owner/Operator and Host, as applicable, to enter this Agreement for the BESS.

e. System Owner/Operator and Host meet all the BESS eligibility criteria listed on Exhibit A of this Agreement.

f. The primary business at the PV System Address is not and will not be the generation of electricity for retail or wholesale sale.

g. The proposed PV System nameplate capacity in kW AC at the PV System Address does not and will not exceed the service entrance capacity at the PV System Address.

h. The PV System is and will be sized to supply no more than 200% of the reasonably expected average annual consumption of electricity by the Host at the PV System Address. System Owner/Operator acknowledges that Public Service's Solar\*Rewards Program is only available to

PV systems where the estimated annual generation, as determined via PVWATTS, is not more than 200% of the reasonably expected average annual total consumption of electricity at the PV System Address. System Owner/Operator represents that it has no present intention to transfer its ownership or rights in the PV System Address, or otherwise employ any means to circumvent the sizing limitations in this subsection 6(g) and does not presently have reason anticipate a change in such intention.

i. Whether or not System Owner/Operator is the Host, System Owner/Operator represents as of the date hereof, and warrants and covenants throughout the Term, that, for the PV System Address, the Host or Host's Tenant is and shall be at all times a retail electric service customer of Public Service at the PV System Address, the PV System Address is and shall be at all times within Public Service's electric service territory, and the PV System Address is and shall be at all times owned or leased by the Host (subject to cure by delivering a new Host Acknowledgement pursuant to subsection 6(i)).

j. If System Owner/Operator is not the Host, System Owner/Operator represents as of the date hereof, and warrants and covenants throughout the Term, that (i) it is and shall be at all times duly authorized by the Host to own and/or operate (as applicable) the PV System and the BESS at the PV System Address and to perform any and all obligations of System Owner/Operator and acts permitted to be performed by System Owner/Operator under this Agreement; (ii) the PV System and the BESS are and shall be at all times operated for the benefit of the Host (except to the extent the BESS may be operated for the benefit of Public Service's electric grid); and (iii) it shall notify Public Service immediately if at any point during the Term of this Agreement any of the foregoing is not true and correct in all respects. System Owner/Operator shall obtain a Host Acknowledgement in substantially the form attached hereto as Exhibit C prior to the execution of this Agreement. If System Owner/Operator fails to obtain a Host Acknowledgement prior to the execution of this Agreement, or if at any time during the Term such Host Acknowledgement is not true and correct in all respects or the foregoing warranties are not true and correct in all respects, Public Service may terminate this Agreement immediately upon notice to System Owner/Operator. If at any point during the Term the Host transfers ownership of the PV System Address to a new Host or a new Host leases the PV System Address, System Owner/Operator shall cause the new Host to execute and deliver a Host Acknowledgement in substantially the form attached hereto as Exhibit C within 30 days of such transfer. If the new Host fails to timely execute and deliver such a Host Acknowledgement to Public Service, Public Service may terminate this Agreement immediately upon notice to System Owner/Operator.

k. Any proposed assignment, and the execution thereof in accordance with Section 21 of this Agreement, will not breach any agreement or arrangement between the System Owner/Operator and the Host, if any.

## 7. Covenants.

a. System Owner/Operator shall ensure that the PV System, BESS, and all associated equipment installed at the PV System Address is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

b. Subject to early termination of this Agreement with respect to the BESS pursuant to subsections 3(g) or 4(c), System Owner/Operator shall maintain the BESS and the individual components of the BESS in good working order at all times during the Term. If during the Term the BESS or any of the individual components of the system should be damaged or destroyed or otherwise fall into disrepair or fail to remain operational, System Owner/Operator shall promptly repair or replace the equipment to its original specifications, or remedy such other failure to operate, at System Owner/Operator's sole expense. System Owner/Operator will not tamper with the BESS or BESS data and will take reasonable steps to restrict access by others attempting to tamper with the BESS or BESS data. System Owner/Operator shall notify Public Service promptly upon discovering: (i) any damage to the BESS, (ii) theft or vandalism of the BESS, (iii) failure of the BESS to operate properly or at all, (iv) unsafe conditions at or near the BESS or (v) injury to persons or damage to property that System Owner/Operator reasonably believes may have been caused by or related to the BESS.

c. System Owner/Operator shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term. If during the Term the PV System or any of the individual components of the system should be damaged or destroyed or otherwise fall into disrepair or fail to remain operational, System Owner/Operator shall promptly repair or replace the equipment to its original specifications, tilt and orientation, or remedy such other failure to operate, at System Owner/Operator'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 RECs generated prior to such damage, destruction or failure to operate. Public Service shall have the right, exercisable at its sole option, to terminate this Agreement, with no further obligation of the Parties to perform hereunder following the effective date of such termination, (i) upon 30 days' written notice if the time period for repair or replacement is reasonably anticipated to exceed 180 days, or (ii) immediately upon written notice at any time before the PV System has been made fully operational again if the PV System has been out of operation for more than 90 consecutive days.

d. System Owner/Operator shall pay and remain responsible to pay all taxes imposed by any governmental authority on the PV System and the BESS and taxes imposed on the PV System Address, including real property taxes and any increases therein related to the improvement of real property by the existence of the PV System and BESS at the PV System Address, and Public Service will have no liability for any of the foregoing.

8. Assignment. This Agreement may be assigned or deemed assigned as follows. If the System Owner/Operator is no longer the owner or authorized operator of the PV System and the BESS, whether in connection with a disposition of the PV System Address, Host or Host's Tenant ceasing to be the customer of record at the PV System Address, a termination of System Owner/Operator's authorization by Host or otherwise, but in each case, the PV System and the BESS remain in operation at the PV System Address, (i) the new customer of record at the PV System Address (or new owner or authorized operator of the PV System and the BESS, if different from the new customer of record) may assume this Agreement in a form satisfactory to Public Service at the original REC purchase price set forth in subsection 1(b), and complete any required Interconnection Agreement process, in which case, this Agreement will be deemed assigned by the System Owner/Operator with no further signature or other action required by the System

Owner/Operator, or (ii) Public Service may deem this Agreement terminated (without requirement of notice) if the new customer of record does not take the actions in the foregoing clause (i) within a reasonable time, as determined by Public Service, but no less than 30 days. If the new customer of record does not assume this Agreement, or enter into a new Battery Connect Agreement for the PV System and the BESS, System Owner/Operator shall, upon the request of Public Service in its sole discretion, make any liquidated damages payments required in accordance with subsection 7(c) and the BESS Termination Fee, if any, with the Early Termination Date for such fee assessed based on that date of deemed termination by Public Service.

9. Substantial Completion.

a. The System Owner/Operator shall cause the PV System and BESS to achieve Substantial Completion within (i) 18 months following the Application Date if the PV System is 1 megawatt ("MW") or less, or (ii) 18 months following the execution of the Interconnection Agreement if the PV System is larger than 1 MW (such dates, as applicable, the "Target Completion Date"). Public Service will automatically grant six-month extension following the Target Completion Date, provided that: (i) for PV Systems 1 MW or less, the System Owner/Operator will forfeit the deposit to the Renewable Energy Standard Adjustment ("RESA") account in full one day after the Target Completion Date; and (ii) for PV Systems larger than one MW, the Owner/Operator will forfeit the deposit to the RESA account in an amount equal to 1/180th of the deposit per day for each day following the Target Completion Date that the PV System and the BESS have not been brought to Substantial Completion, not to exceed the deposit. For purposes of this Agreement, (i) "Substantial Completion" means the date that all construction and installation of the PV System and the BESS is completed, and the PV System and BESS are ready to be commissioned at the full agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the System Owner/Operator having requested a scheduled witness test for the PV System, if one is required; (ii) "Application Date" is the date that the System Owner/Operator has both submitted the PV System application and paid the application deposit, and (iii) "Renewable Energy" means energy generated from renewable energy resources including renewable distributed generation.

b. The "Date of Commercial Operation" shall be the date that System Owner/Operator has met all of the criteria of subsection 9(a) and all necessary metering has been installed or reprogrammed.

10. Applicability of Solar\*Rewards Program. The PV System and BESS shall be installed as part of Public Service's Solar\*Rewards Program and shall be subject to all rules and policies associated with that program.

11. Disclaimer of Warranty; Limitation of Liability. Public Service makes no express or implied warranty as to the design, quality, condition, and performance of the PV System and the BESS or any goods, services, facilities, or equipment related thereto, or as to the merchantability or fitness for a particular purpose of the PV System and the BESS. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System and the BESS, the BESS software platform, the BESS Provider's actions or any individual component equipment of the system, or the installation thereof or services therewith. Neither Public Service

nor its contractors shall be liable to System Owner/Operator or Host for any punitive, special, exemplary, consequential, or incidental 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 tax, financial or legal consequences, if any, to System Owner/Operator or Host with respect to the installation of the PV System and BESS or the production, storage, and sale of Renewable Energy or the RECs, and System Owner/Operator is urged to seek professional advice regarding these issues. For purposes of this Agreement, “Renewable Energy” means energy generated from renewable energy resources including renewable distributed generation.

12. Indemnification. Except for System Owners/Operators that are a Governmental Entity, System Owner/Operator 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, damages, liability, or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System, the BESS, or any component equipment of the PV System or BESS. As used in this Agreement, “Governmental Entity” means any federal, state or local government, board, department, agency, special district, instrumentality, or other similar entity entitled to rely on the rights, immunities or protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time.

13. Force Majeure.

a. “Force Majeure” 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, hail or tornadoes; high winds of sufficient strength or duration to materially damage or significantly impair the operation of the PV System such that it is no longer capable of generating Renewable Energy and associated RECs in commercial quantities or the BESS such that it is no longer capable of storing energy; long-term material changes in Renewable Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of System Owner/Operator to secure and protect the PV System and BESS, 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. “Force Majeure” does not include (i) any acts or omissions of any third party (including Host or Host’s Tenant), including, without limitation, any vendor, materialman, customer, or supplier of System Owner/Operator, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the use of the PV System or BESS by Public Service 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, hail 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 System Owner/Operator's supplies, or that affect demand or price for any of Public Service's or System Owner/Operator's products.

c. Applicability of Force Majeure. Except as expressly set forth in this Agreement, 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.

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.

d. 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 365 days from its occurrence or inception, as noticed pursuant to this section 13, the Party not claiming Force Majeure may, at any time following the end of such 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 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 System Owner/Operator of any obligation to pay the BESS Termination Fee under subsection 3(f), if any.

14. Dispute Resolution. If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of this 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. 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.

15. Title, Risk of Loss, and Warranty of Title. System Owner/Operator warrants and covenants to Public Service that it has and will throughout the Term have good, marketable, and legal title to all Renewable Energy, RECs, and any stored energy (or sufficient power of agency for Host, which must have good and sufficient title), and except as described in Exhibit D, free and clear of liens and encumbrances. As between the Parties, (i) System Owner/Operator shall be deemed to be in control of the Renewable Energy output from the PV System or BESS up to and until delivery and receipt by Public Service at any net meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at any such net meter, and (ii) System Owner/Operator shall be deemed to be in control of any RECs associated with the output of the PV System and BESS up to and until measurement of such output at the PV Meter for Metered Systems only and at the net meter for Unmetered Systems, and Public Service shall be deemed to be in control of such RECs from and after measurement of such output at the PV Meter for Metered Systems only and at the net meter for Unmetered Systems. Title and risk of loss related to the Renewable Energy shall transfer from System Owner/Operator to Public Service at any net meter, and title and risk of loss of RECs shall transfer from System Owner/Operator to Public Service upon measurement at the PV Meter for Metered Systems and at the net meter for Unmetered Systems.

16. 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 Battery Connect

1800 Larimer St. Suite 1400

Denver, CO 80202

If to System Owner/Operator:

{!Premise\_Address\_\_c}, {!Premise\_City\_\_c},

{!Premise\_State\_\_c} {!Premise\_Zip\_\_c}

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

17. Information. By executing this Agreement, System Owner/Operator grants to Public Service permission to provide the BESS Provider with System Owner/Operator personal information including, but not limited to, name, address, and e-mail address. System Owner/Operator understands and agrees that the BESS Provider will share System Owner/Operator data with Public Service, which may include System Owner/Operator personal information and other information regarding this Agreement, including energy usage data for System Owner/Operator's home, System Owner/Operator's Solar Renewable Energy System (if applicable), and the BESS ("BESS Data"). Public Service may use System Owner/Operator information and Bess Data for any purposes permitted by the Commission's data privacy rules and in accordance with Public Service's privacy policy located at <https://co.my.xcelenergy.com/s/privacy>, which may be amended from time to time. Public Service maintains administrative, technical and physical safeguards designed to protect the privacy and security of the information maintain about its customers, as outlined in Public Service's privacy policy. By entering this Agreement, System Owner/Operator acknowledges and authorizes the collection and exchange of System Owner/Operator information and BESS Data as described above. System Owner/Operator, and Host if System Owner/Operator is not the Host, has separately signed Public Service's Consent to Disclose Utility Customer Data located at <https://www.xcelenergy.com/staticfiles/xcel-response/Billing%20%26%20Payment/Consent-To-Disclose-Utility-Customer-Data-Form-English.pdf>, incorporated by reference herein.

18. Governing Law; Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply. Any action brought with respect to this Agreement shall be brought in the courts located in Denver County, Colorado.

19. Entire Agreement. This Agreement, together with all Exhibits attached hereto and any applicable tariff, constitutes the entire understanding and agreement between the Parties with respect to the PV System and use of the BESS by Public Service, and all prior agreements, understandings, or representations with respect to the subject matter herein are hereby canceled in their entirety and are of no further force and effect.

20. 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 an electronic signature or facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

21. Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and, except as expressly set forth in this Agreement, shall not be assigned by System Owner/Operator without the prior written consent of Public Service, which consent shall not be unreasonably withheld. Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the PV System Address. Any prohibited assignment or delegation shall be null and void. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto.

22. 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 on behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. Severability. In the event any words, phrases, clauses, sentences or other provisions in this Agreement are found to be invalid or violate any applicable law, such offending provision or provisions shall be ineffective to the extent of such violation without invalidating the remainder of this Agreement, and the remaining provisions of this Agreement shall be construed consistent with the intent of the parties hereto as closely as possible, and the Agreement, as reformed, shall be valid, enforceable and in full force and effect.

29. Survival. The provisions of this Agreement that logically should survive to give effect to the rights and obligations of the Parties shall survive, including without limitation payment and indemnification obligations with respect to events and circumstances arising prior to termination.

[Signature Page Follows]

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

**System Owner/Operator:**

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

Name: \_\_\_\_\_

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

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

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

Name: \_\_\_\_\_

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

## **EXHIBIT A**

### **BATTERY CONNECT ELIGIBILITY CRITERIA & OBLIGATIONS**

- a) System Owner/Operator and Host were not participants in the Demand Side Management Battery Connect Pilot Program and have not otherwise received an incentive payment from Public Service associated with the BESS at the PV System Address. System Owner/Operator acknowledges that even if more than one BESS is installed at the PV System Address, System Owner/Operator will only be eligible to receive one BESS Incentive at the PV System Address.
- b) The BESS is a qualified BESS approved and able to be dispatched by Public Service.
- c) The BESS will remain connected to the BESS Provider's network via a cellular connection or System Owner/Operator's or Host's Wi-Fi networks and can maintain on-going and stable connection throughout the Term at the PV System Address. System Owner/Operator has and will maintain services needed to perform its duties under this Agreement at no expense to Public Service. System Owner/Operator acknowledges that the BESS Provider may communicate with System Owner/Operator regarding this or other requirements and that Public Service will not be responsible for System Owner/Operator's compliance with these requirements or any costs associated with such compliance. System Owner/Operator is responsible at no cost or expense to Public Service for maintaining in working order the BESS or other electrical equipment needed to operate the BESS. System Owner/Operator will comply with all any BESS Provider terms and conditions and will meet any other requirements of the BESS Provider, including downloading any BESS Provider required software application.
- d) A valid Interconnection Agreement exists for the BESS with Public Service.

## EXHIBIT B

### ACTUAL SYSTEM INSTALLATION INFORMATION

System Owner/Operator Name: {! System Owner/Operator \_Name \_\_c}

Installation Address:

{!Premise\_Address\_\_c}, {!Premise\_City\_\_c}, {!Premise\_State\_\_c} {!Premise\_Zip\_\_c}

Installer Name: {!Installer\_Name\_\_c}

Actual Price for PV Installation: \${!Estimated\_Project\_Cost\_\_c}

Date of Town / Municipal / County Inspection: {!Inspection\_Date\_\_c}

Date of PV Installation: {!Net\_Meter\_Install\_Date\_\_c}

REC Price: \${!Incentive\_\_r.Name} per kWh

#### **System Details:**

{\$SolarRewardsAssets}

As the installer for this project, I certify that the above-referenced PV equipment was installed at the address identified in this Exhibit B.

Installer Signature: \_\_\_\_\_[[SertifiSSStamp\_1\_2]]\_\_\_\_\_

Date: \_\_\_\_\_[[SertifiDate\_1\_2]]\_\_\_\_\_

**EXHIBIT C**

**FORM OF HOST ACKNOWLEDGMENT**

**EXHIBIT D**

**LIENS AND ENCUMBRANCES**

## HOST ACKNOWLEDGEMENT

The individual or entity named below (“Host”) desires to acknowledge to Public Service receipt of the agreement(s) checked below, which were entered into between Public Service Company of Colorado, d/b/a/ Xcel Energy, a Colorado corporation (“Public Service”) and a third party that Host has duly authorized to enter into and perform under such agreement(s).

1. Host acknowledges and agrees that it has received copies of the following agreements:

☐ **Solar\*Rewards REC Purchase Contract** by and between \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_\_\_.

☐ **Solar\*Rewards REC Purchase Contract – Low Income** by and between \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_\_\_.

☐ **DER Interconnection Agreement** by and between \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_\_\_.

☐ **Solar\*Rewards Battery Connect Agreement** by and between \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_\_\_.

2. Host has read the agreement(s) checked above, understood them, and acknowledge them as legally binding documents that affect the property or properties referenced therein (the “Premises”) as further described in such agreement(s). Host represents as of the date hereof that it owns or leases the Premises. Host agrees that it shall notify Public Service immediately (in advance if possible) if it no longer owns or leases the Premises at any time during the term of the agreement(s) checked above.

3. Host represents as of the date hereof, and covenants so long as Host owns or leases the Premises during the term of the agreement(s) referenced above to Public Service, that: (i) the third party that is the system owner or operator under the foregoing agreement(s), or its successor (which successor must be authorized by Host and made known to Public Service) is and will be duly authorized by Host (whether through separate agreement or otherwise) to own and/or operate, as applicable, the Distributed Energy Resource (“DER”) at the Premises and to perform any and all obligations of the system owner or operator and acts permitted to be performed by the system owner or operator under such agreement(s); and (ii) the DER is and shall be at all times operated for the benefit of the Host. Host agrees that it shall promptly notify Public Service (in advance if possible) if the system owner or operator is no longer authorized in accordance with the foregoing clause (i).

For the purposes of this agreement, “DER” means the system owner or operator’s source of electric power connected to Public Service’s electric distribution system pursuant to the applicable agreement(s), including retail renewable distributed generation (as defined in the Colorado Public Utilities Commission’s rules for electric generation), other small generation facilities for the production of electricity, energy storage systems, or combination of any of these elements, but shall not include the interconnection facilities not owned by the system owner or

operator. “DER” includes an interconnection system or a supplemental distributed energy resource device that is necessary for compliance with IEEE Standard 1547-2018, until January 1, 2022 or such time new distributed energy resource devices applying for interconnection will comply with IEEE 1547-2018 (but not including any later amendments or editions of such standard). “DER” also includes any controls, relays, switches, breakers, transformers, inverters, and associated wiring and cables, up to the point where the electric power system contained entirely within the Premises is connected to Public Service’s systems.

4. Host acknowledges that if the system owner or operator fails to obtain this Host Acknowledgement prior to the execution the above-referenced agreement(s), or if at any time during the term of such agreement(s), this Host Acknowledgement is not true and correct in all respects or if the representations and warranties of the system owner or operator in the above agreement(s) are not true and correct in all respects, Public Service may terminate the agreement(s) immediately upon notice to the system owner or operator.

5. Host acknowledges that if at any point during the term of the agreement(s), the Host transfers ownership of the Premises to a new Host or no longer leases the Premises, as applicable, and the system owner or operator does not cause the new Host to execute and deliver to Public Service a Host Acknowledgement in substantially similar form as this Host Acknowledgement within 30 days of such transfer, Public Service may terminate the above-referenced agreement(s) immediately upon notice to the system owner or operator.

6. Host further acknowledges that Public Service is relying on the representations and covenants above to carry out its obligations under its agreement(s) with the system owner or operator. Public Service is not responsible or liable for any personal injury or property damage caused by the DER. Public Service shall not be liable to Host 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 has made no warranty or representation concerning the tax, financial or legal consequences, if any, to Host with respect to the installation of the DER or the production and sale of renewable energy or renewable energy credits.

7. 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. This agreement is binding on and shall inure to the benefit of Public Service and Host and their respective successors and assigns. All matters arising out of or relating to this agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction). This agreement is subject to applicable law, including the rules and regulations of the Colorado Public Utilities Commission, and Public Service’s tariff for electric service, as each may be modified from time to time.

BY SIGNING, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTOOD, AND  
AGREE TO ALL OF THE TERMS OF THIS HOST ACKNOWLEDGEMENT.

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

Name: \_\_\_\_\_

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

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



**[2022] Solar\*Rewards Large Request for Proposals  
PV System Renewable Energy Credits (RECs)**

**Issued Date:** \_\_\_\_\_  
**Proposal Submission Due Date:** \_\_\_\_\_

Xcel Energy Inc., headquartered in Minneapolis, Minnesota, is a U.S. investor-owned holding company parent of four major electric and natural gas utilities. The four Xcel Energy operating companies have regulated utility operations in the eight Western and Midwestern states of: Minnesota, Wisconsin, North Dakota, South Dakota, Michigan, Colorado, Texas, and New Mexico. The operating companies of Xcel Energy provide, collectively, energy-related products and services to approximately 3.7 million electric and 2.1 million natural gas customers. More information about Xcel Energy is available at [www.xcelenergy.com](http://www.xcelenergy.com).

Public Service Company of Colorado (“Public Service” or the “Company”) is the Xcel Energy operating company in Colorado. Public Service operates under the trade name of Xcel Energy. This Request for Proposals (“RFP”) seeks solar on-site renewable energy credits or “RECs,” as these terms are defined by Colorado Public Utilities Commission Rule 3652, 4 CCR 723-3-3652, from new solar renewable energy systems to be located in Colorado. Eligible respondents to this RFP (“Respondents”) must be the owners of the proposed solar renewable energy systems, and the systems must be providing energy to a Public Service retail electric customer. Respondents are requested to provide offers for the RECs pursuant to the instructions provided herein. This RFP is limited to proposals for RECs that are generated from solar generating facilities with a gross nameplate rating greater than 1MW and [ ] MW alternating current (AC) with the aggregate of all customer-sited solar generation not to exceed 200% of the aggregate reasonably expected average annual consumption of electricity at all properties owned or leased by the Customer within the Company’s service territory.

This RFP contains several sections, including an Introduction, Proposal Logistics, Bid Submittal, Evaluation Process and Assumptions, Delivery and Interconnection, Solar\*Rewards REC Purchase Contracts.

The Company will, in its sole discretion and without limitation, evaluate proposals and proceed in the manner the Company deems appropriate, which may include deviation from the Company's expected evaluation process (in accordance with Commission decisions, rules, and regulations), the waiver of any requirements and the request for additional information.

Respondents that submit proposals agree to do so without legal recourse against the Company, its affiliates, or their respective employees, directors, officers, customers, agents or consultants for rejection of their proposals or for failure to execute an agreement for any reason. The Company and its affiliates shall not be liable to any respondent or other party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. By submitting its proposal, each respondent waives any right to challenge any valuation by the

Company of its proposal or any determination of the Company to select or reject its proposal. Each respondent, in submitting its proposal, irrevocably agrees and acknowledges that it is making its proposal subject to and in agreement with the terms of this RFP. Please provide all the information requested to enable the Company to properly evaluate your proposal. Feel free to provide any additional information, even if not specifically requested here, that you feel would help in the Company's evaluation process.

This RFP, including all attachments to this RFP and information provided by the Company in connection with this RFP are the property of the Company and are delivered only for the purpose of enabling each potential Respondent to prepare and submit a proposal in response hereto. By submitting a bid, including any files, designs, specifications or other appended or related data, you authorize the Company to use such information and materials for any purpose related to this RFP or the acquisition of energy resources by the Company. In the event that bid documents are identified as confidential to the Respondent, the Company reserves the right to retain bids and associated documents in accordance with the Company's records retention policy, but will deploy its standard data management practices for secure and confidential information.

## **[2022] Solar\*Rewards Large Request for Proposals**

### **Section 1. Introduction**

Public Service is issuing this RFP for solar on-site energy and environmental attributes from new solar renewable energy systems in Colorado that will meet the following requirements:

1. Uses a proven and UL-approved solar photovoltaic technology to generate electricity and meets applicable interconnection guidelines.
2. Will be located within Public Service's service territory on the premises of a Public Service retail customer and interconnected on that same site. The customer shall not have as its primary business the generation of electricity for retail or wholesale sale. The customer must use its premises where the solar renewable energy system will be located for a legitimate commercial, industrial, governmental, or educational purpose other than the generation of electricity for retail or wholesale sale.
3. Installations must reach Substantial Completion (as defined in the REC Purchase Contract) by (x) 18 months from when the Interconnection Agreement is executed by all parties and payment received, subject to an automatic 6-month extension with forfeiture of the deposit in daily increments for systems larger than 1 MW.
4. Have gross nameplate rating between 1.01 MW and [ ] MW (AC).
5. Produce electricity primarily for the customer's consumption. All renewable energy installations for the Customer site may not exceed 200% of the aggregate reasonably expected average annual consumption of electricity at all properties owned or leased by the Customer within the Company's service territory. If there are CSG subscriptions attributed to the Customer site, those subscriptions must not be sized larger 200% of the aggregate reasonably expected average

annual consumption of electricity at all properties owned or leased by the Customer within the Company's service territory after deducting the proposed solar renewable energy system (once existing and interconnected), and any other on-site retail distributed generation resources.

Public Service invites proposals from all potential Respondents who are capable of meeting the requirements of the RFP. Public Service invites proposals either from the customer on whose premise the solar system will be installed or from a third-party owner/developer of a solar system to be installed on a customer premise, so long as the Customer agrees to the submission of the third-party owner. Each Customer is limited to one submission for a specific project (for example the same solar installation cannot be submitted as both Customer-owned and third-party owned with separate RFP submissions.)

This introductory section describes the type, amount, and timing of solar resources sought in this Solar\*Rewards Large RFP. Section 2 covers logistics such as where and when proposals must be submitted, bid evaluation fees, and policies and procedures. Section 3 describes the bid submittal process. Section 4 addresses the evaluation process and assumptions. Section 5 provides requirements related to interconnection.

### **1.1 Resource Acquisition Objectives**

Colorado Revised Statutes ("C.R.S.") Section 40-2-124, sets forth the Colorado Renewable Energy Standard, and establishes the amount of energy to be generated from eligible energy resources that Public Service is required to obtain. The CPUC has defined, by rule, what solar generation facilities qualify as on-site solar systems. See 4 CCR 723-3-3652(q). This RFP is designed to procure competitively priced environmental attributes including RECs derived from on-site solar systems within the meaning of this rule.

**The Company is seeking 15 MW AC from this solicitation.**

If bids selected for award are such that they exceed [ ] MW total the lowest score winning bid(s) will be reduced in size so that the sum of all awarded bids does not exceed [ ] MW.

### **1.2 Eligible Technologies**

To be eligible to bid into this RFP, all solar photovoltaic generating systems must be located wholly within Public Service's certificated electric service territory and qualify as on-site solar systems under the CPUC Rules and Colorado law. The determination of whether any technology meets these criteria is at the sole discretion of Public Service.

### **1.3 Interconnection**

The Respondent or the customer of awarded capacity will be responsible for entering into the Interconnection Agreement or other applicable interconnection agreement ("Interconnection Agreement") with Public Service at each site prior to producing energy from the solar generating system or interconnecting with Public Service's electric grid. See, for example, Public Service's filed form of Small Generator Interconnection Agreement in Proceeding No. 19A-0369E.

The solar generating system installation under this RFP must be interconnected on the Customer's

side of the revenue meter to be considered for an award under this RFP. The generating facility must also be located on the Customer's site, consisting of property owned or leased by the Customer. The Customer will continue to purchase the energy needed beyond the energy supplied by the on-site solar generating system from Public Service at the standard tariff rate and the Company will purchase any excess energy generated by the on-site solar generating system from the Customer under the Company's net metering tariff. Customers may make a one-time election to have the excess energy credits rollover from year to year pursuant to the net metering tariff.

While an RFP award does not guarantee the ability to interconnect, for successful Respondents, Public Service will provide to the Respondent an estimate of the interconnection costs, timelines, and any interconnection limitations for each installation site following standard interconnection protocols and timelines. The Respondent is responsible for paying Public Service the full amount of any interconnection studies and costs and maintaining adequate process and communication so as to enable successful interconnection under standard Public Service operating procedures without impacting Solar\*Rewards required timelines. This information can be found on Public Service's website: [Interconnection | Xcel Energy](#).

#### **1.4 Pricing**

This RFP requires REC pricing in \$/MWh units rounded at least to the second decimal place for bid evaluation purposes. Pricing must be a constant price for each year of the term. Pricing may not exceed a bid cap of \$/kWh. The pricing forms and instructions are in Appendix A of this RFP.

#### **1.5 Solar\*Rewards REC Purchase Contracts ("RECPC")**

Two (2) different types of Respondents may elect to participate in this RFP:

- Property owners or tenants who will own the on-site solar system; and
- Third-party developers who will construct and own the on-site solar system on the premises of the customer.

All specifications and pricing contained within a proposal **must** be consistent with the applicable provisions set forth in the RECPC for the appropriate Respondent type. Respondents must submit a proposal that completely comports with the RECPC.

The length of the contracts for the sale of the solar energy benefits shall be the same for all proposals. This term is twenty (20) years.

#### **1.6 Environmental and Renewable Energy Credits**

For purposes of this solicitation, each REC represents one-megawatt hour (MWh) of renewable energy. The conveyance of RECs to Public Service includes the transfer to Public Service of all environmental attributes, emission reduction credits, and RECs, as defined by Commission Rule, associated with the solar energy production.

#### **1.7 Special Conditions for Third-party Developers in Public Service's Service Territory**

So that Public Service may evaluate cost-effective alternatives to meet its REC obligations under the CPUC's rules for the Renewable Energy Standard, Public Service allows third-party

developers to install, own, maintain, and finance on-site solar systems at Public Service customer sites and to transfer the solar energy attributes, including RECs, to Public Service. To accomplish this objective, the following arrangements will apply:

1. Public Service will own and read the kWh production meter, but the third-party developer will pay for the meter Service under Schedule PV whose generation facilities were installed after March 21, 2015 and will be responsible for Production Meter charges consistent with the Company's CPUC-approved tariffs (COLO. PUC No. 8 Electric), which will be deducted from the REC payment applicable to the awarded REC price.
2. Third-party developers will provide Public Service with the Public Service customer name, contact, and phone number with their request.
3. Third-party developers will be able to set their own price for solar energy sold to the Public Service retail customer from the on-site solar installation.
4. Third-party developers will enter into the Interconnection Agreement and RECPC with Public Service, and the retail customer will provide a separate host acknowledgement to Public Service.

### **1.8 Meteorological and System Operation Data**

Rule 3656(l) states:

For eligible energy resources greater than 250 kW, the owner shall provide, at the Qualifying Regulated Utility's (QRU's) request, real time electronic access to the QRU of system operation data. In the event that an eligible energy resource greater than 250 kW also collects meteorological data, the owner shall provide, at the QRU's request, real time electronic access to the QRU to such meteorological data.

Consistent with this provision, Public Service maintains the right to obtain access to all system operation data and meteorological data.

## **Section 2. Proposal Logistics**

### **2.1 Schedule**

As shown on the following schedule, proposals are due by 4:00 PM Mountain Standard Time on [DATE]. Public Service expects to notify the bid winners by [DATE] but reserves the right to change the schedule.

| Activity                 | Date |
|--------------------------|------|
| RFP Issue Date:          | []   |
| Proposals Due:           | []   |
| Award Announcement Date: | []   |
| System Operational Date: | []   |

## **2.2 Proposal Submission Deadline**

**All proposals will be accepted until 4:00 P.M. Mountain Standard Time on the date indicated in Section 2.1.** All proposals must be uploaded to the Public Service electronic bid submission system. To gain access to the submission system please complete the Intent to Bid form linked below at least two weeks prior to the proposals due date listed in Section 2.1. If access is not granted within two weeks of submitting the form please send an email to [Kristin.Gaspar@xcelenergy.com](mailto:Kristin.Gaspar@xcelenergy.com).

Link: [[Intent to Bid Form](#)]

RFP webpage: <https://co.my.xcelenergy.com/s/renewable/developers/solar-rfp>

Proposals received later than the due date and time indicated will be rejected, unless Public Service determines, in its sole discretion, to consider such proposals.

## **2.3 Information Policy**

To obtain additional information about this RFP, potential respondents as well as all other parties may only submit written requests to the RFP Program Manager via email at [Kristin.Gaspar@xcelenergy.com](mailto:Kristin.Gaspar@xcelenergy.com). Potential respondents as well as all other parties should not attempt to acquire information through any other means including telephone calls to the Company. Questions and responses will be periodically posted to the RFP webpage; <https://co.my.xcelenergy.com/s/renewable/developers/solar-rfp> within the RFP Q&A Tracker; the Company may edit the questions to ensure that the answers are germane to the widest audience possible. The Company has established this information policy to ensure that all respondents have the same timely access and knowledge about the bidding and evaluation process.

Potential respondents are strongly advised to review the Q&A Tracker frequently. Alternatively, potential respondents who provide email contact information to the RFP Manager will provide an updated Q&A Tracker via email as they are posted to the webpage. In addition, Public Service will hold an informational, “Respondents’ Meeting” within 2 weeks of issuance of the RFP. At this meeting, Public Service will accept questions from Respondents and provide feedback or indicate a timeframe for feedback to questions. After the meeting, Public Service will post all responses to questions from the meeting on the <http://www.xcelenergy.com/2022LargeRFP> website.

## **2.4 Bid Evaluation Fees**

All respondents are required to pay to the Company a non-refundable bid evaluation fee with each proposal submitted (each site requires a separate bid evaluation fee) according to the Bid Fees table below.

**Large Program RFP Bid Fees**

| <b>MW Range</b> | <b>Bid Fee</b> |
|-----------------|----------------|
| >1 to 2 MW      | \$750          |
| >2 to 5 MW      | \$1,500        |
| >5 to 10 MW     | \$3,000        |
| >10 MW          | \$10,000       |

Payments may be made by wire transfer or by check. Checks should be made out to “Public Service Company of Colorado” and must be sent to the following address as part of each individual bid proposal.

Xcel Energy Solar\*Rewards Program  
P.O. Box 59  
Minneapolis, MN 55440-0059

A proposal consists of the following – one proposed installation address, one REC delivery amount for each year, a term length of 20 years, and one fixed price (*i.e.*, the same price for each year of the contract term). Proposals that vary any of these conditions constitute multiple proposals and as such will require an additional bid evaluation fee.

## **2.5 Proposal Forms**

All proposals must include a complete set of forms for each bid. Using the forms will ensure consistency in bid submission, interpretation and evaluation by Public Service. If a Respondent is submitting more than one proposal, a separate set of forms must be submitted for each proposal. The forms, together with instructions for each form, are provided in Appendix A to this RFP. Each bid alternative will require a separate set of forms and a separate bid evaluation fee.

## **2.6 Clarification of Proposals**

While evaluating proposals, Public Service may request additional information about any item in the proposal. Such requests will be made in writing usually via email. The Respondent is required to provide a written response to the Public Service Solar\*Rewards RFP Project Manager within five (5) business days, or Public Service may deem the Respondent to be non-responsive and stop evaluating the bid. To facilitate meeting the five-day response timeframe, Public Service encourages Respondents to provide one or more alternate points of contact for these questions, with email being the preferred method of communication.

## **2.7 Representations**

This RFP does not commit Public Service to pay any costs incurred in the preparation of a proposal in response to this RFP or to procure or contract for any services offered in response to this RFP. Public Service reserves the right to modify or withdraw this RFP, to negotiate with all qualified Respondents to resolve technical or contractual specifications, and/ or to reject any or all responses and to terminate contract development discussions at any time. Prior to the execution of a contract, Public Service reserves the right to:

- Request from a Respondent information that is not explicitly detailed in this document;
- Reject any or all proposals;
- Reject any proposals that, at Public Service’s sole discretion, are not complete or contain irregularities, or waive irregularities in any bid that is submitted;
- Accept or reject any proposals not received on or before the due date specified;
- Accept other than the lowest cost proposal(s);
- Accept proposals which would cause Public Service to exceed the [ ] MW capacity

- from this solicitation;
- Obtain clarification from Respondent concerning proposals; and
- Conduct contract development discussions with selected Respondents.

## **2.8 Confidentiality**

Each page of the RFP response should be clearly identified as to whether it contains confidential or proprietary information. Public Service reserves the right to release any proposals to agents or consultants for purposes of proposal evaluation. Public Service's disclosure standards and policies will contractually bind such agents or consultants. Regardless of the confidentiality, all such information may be subject to review by the appropriate state jurisdiction, or any other governmental authority or judicial body with jurisdiction relating to these matters and may be subject to legal discovery. Under such regulatory and legal circumstances, Public Service will make all reasonable efforts to preserve Respondent's confidential information, including requesting that it be filed under seal. Public Service reserves the right to publicly disclose summary information regarding the bid information in a form and manner that does not reveal the identity of any particular Respondent. Without limiting the foregoing, each Respondent acknowledges and agrees that Public Service may make an informational filing with the CPUC within thirty (30) days following the bid deadline that includes average bid price, number and capacity of bids received and number of bidders, and that Public Service may review anonymized bids as well as evaluation criteria with CPUC Trial Staff prior to finalizing bids, in each case without liability to any Respondent. Public Service reserves the right to retain any and all bid documentation as required under the Company's record retention policy.

## **2.9 Withdrawal of or Addenda to RFP**

Public Service reserves the right to modify, supplement or withdraw this RFP by issuing one or more addenda at any time during this solicitation. Such addenda shall become a part of this RFP and any additional responses required of Respondent by any such addenda shall become part of each proposal.

## **Section 3. Bid Submittal**

### **3.1 Minimum Bid Eligibility Requirements**

This section lists the minimum requirements that all proposals must meet to be eligible to participate in this solicitation. Proposals that do not comply with these requirements will be deemed ineligible and will not be considered for further evaluation.

- Proposals must include all applicable content requirements described in Section 3.2, including clear and complete written descriptions of all information requested and completed forms.
- Proposals must clearly specify all pricing terms in accordance with Section 1.4.
- Proposals must demonstrate an acceptable level of development and technology risk, as determined by the Company's evaluation team.
- Proposals must be for 20-year terms only, in accordance with Section 2.4.
- Proposals must be submitted to the Public Service electronic bid submission system along with a non-refundable bid evaluation fee in accordance with Large Program

RFP Bid Fees table above sent by wire or mailed check, in accordance with Section 2.4.

### **3.2 Proposal Content Requirements**

This section outlines the content and format requirements for all proposals submitted in response to this [2022] Solar\*Rewards Large RFP. Proposals that do not include the information requested in this section will be ineligible for further evaluation, unless the information requested is not applicable or relevant to a given bid. If it appears that certain information is inadvertently omitted from a proposal, Public Service may contact the Respondent to obtain the additional information.

The first section of each proposal must contain an Executive Summary that provides an overview of the bid's characteristics, including any unique aspects or benefits. The second section of the proposal must include the set of forms included in Appendix A. These forms will contain essential information about each bid, and a separate set of forms and related information must be submitted with each proposal. The third section of the proposal must include other proposal information, which must be in narrative form under specific topic headings.

A complete proposal will include the following three components:

#### **1. Executive Summary**

#### **2. Complete set of applicable forms**

Appendix A of this RFP document includes detailed descriptions of each of these forms, as well as any special instructions for completing the forms.

- **Form A Bid Certification Form**
- **Form B Bid Cover Sheet**
- **Form C Technical Description**
- **Form D Construction Milestones**
- **Form E Supply Amount & REC Bid Form**
- **Form F Anti-Collusion Affidavit**

#### **3. Narrative Topics Discussion**

In addition to completed forms, each proposal must also include a thorough written discussion of each of the following two topics. The narrative topics should be organized under the following headings, with each heading beginning on a separate page.

- **Project Development Schedule**  
All proposals must provide a detailed schedule of project development activities and target completion dates for engineering, permitting, equipment procurement, construction, start-up and commissioning. Describe the overall development strategy that will ensure that the project can be developed in time to meet the proposed commercial operation date.
- **REC Production Profile**  
All proposals must provide information on expected annual REC production for

each project year. Each Respondent must clearly describe anticipated energy production degradation over the term of the contract, and scheduled/anticipated replacement of significant components.

#### **Section 4. Evaluation Process and Assumptions**

The bid evaluation process will include an assessment of economic and non-economic criteria. The economic evaluation will identify the most cost-effective group of proposals based on each bid's REC price. The Company will award Request for Proposals bids provided such bids are reasonable. The non-economic criteria will be scored as discussed in Section 4.2 of this RFP. The bid evaluation process will involve the following steps. These steps are generally sequential, but certain activities will overlap among steps.

##### **4.1 Eligibility Screening**

The information provided in each bid will first be evaluated for completeness and consistency with the proposal submittal requirements outlined in Section 3 of this RFP. Preliminary due diligence will also be conducted at this stage to identify any "fatal flaws" associated with a bid, such as an unacceptably high level of development risk, a technology risk, likelihood of successful interconnection risk or generation capability exceeding 200% of the aggregate reasonably expected average annual consumption of electricity at all properties owned or leased by the customer within the Company's service territory. As a result of this screening review, Public Service may either eliminate bids from further consideration, or contact Respondents to clarify information or request additional information. Given the short amount of time allotted to evaluate the bids, Public Service will limit follow-up contacts to only those bids that meet the minimum eligibility requirements listed in Section 3.1 and encourage parties to use available location screening tools in advance of bidding to eliminate potential risk of rejection due to fatal flaws.

Bidders should be aware that based on recent Generator Interconnect studies, the Company has limited available transmission injection capability in the San Luis Valley therefore the acceptance of proposals located in this area, or other areas with limited injection capability, will be situational dependent.

##### **4.2 Economic Analysis and Scoring Criteria**

Following Eligibility Screening, levelized REC costs of the remaining bids will be calculated. Levelized REC costs will be calculated from bid REC price.

For community-based projects, the Company will include an assumption of 1.5 RECs per MWh in its economic analysis of the pricing provided by the Respondent that is applicable should the project be deemed to be community-based.

### Scoring Matrix

| Category                                    | Description  | Points                 |
|---|--|------------------------|
| Economics                                   | Price per MWH  | 80                     |
| Community-Based                             | Community-based projects that (i) have a generating capacity that does not exceed 30 MW, (ii) are owned by individual residents of a community, by an organization or cooperative that is controlled by individual residents of the community, by a local government entity, or by a tribal council, and (iii) are supported by a resolution by the local governing body of the local jurisdiction where the project is located. | + 20                   |
| Supplemental Characteristics (Bonus Points) | e.g. Societal Impacts, Innovation (potentially more than 1 at a site, each option receives 5pt)  | +5 each, 10 points max |

Each bid will be evaluated based on the scoring matrix listed above. The project with the lowest price will get 80 points, proportionally scored downward based on differential from lowest price. A Community-Based project and/or including supplemental characteristics can earn bonus points that could increase the score and chances of being awarded. Projects meeting the innovation criteria must provide unique benefits to the electric system and/or society.

### 4.3 Evaluation Assumptions

The following planning assumptions will underlie Public Service's bid evaluation process.

#### **Utility Discount Rate and Cost of Capital**

Public Service will use a discount rate based upon what is approved in the Company's last Commission-approved electric rate case. This is currently [6.53]% based on its current weighted after-tax cost of capital.

#### **Community-Based Projects**

Public Service is allowed to reflect an additional bonus amount of RECs generated from a Community-Based Project, as defined in Rule 3652(d) of the CPUC Rules. This bonus amount will be calculated and added to the estimated number of RECs produced. This adjusted value will be used in the economic analysis of the bid when comparing it against other bids made in response to this RFP. If a Respondent qualifies under Rule 3652(d) it agrees to assist Public Service in obtaining any approvals or declaratory rulings from the CPUC, as deemed necessary by Public Service, that such proposed on-site solar system

qualifies as a Community-Based Project.

*Please note:* Respondents will be paid only on the basis of 1 REC per MWh of energy generated; i.e., Respondents will not be paid for the additional 0.5 “bonus” RECs used by the Company for compliance purposes.

#### **4.4 Evaluation Team**

A bid evaluation team has been formed to develop the RFP, and to evaluate and select bids. Members of the bid evaluation team include personnel from various departments within Public Service, each with different responsibilities. Public Service may make an informational filing with the CPUC within thirty (30) days following the bid deadline that may review anonymized bids as well as evaluation criteria with CPUC Trial Staff prior to finalizing bids, in each case without liability to any Respondent as stated in Section 2.8.

#### **4.5 Notification of Bid Results**

Public Service intends to notify Respondents of the results of the bid evaluation and begin contract development on or about [DATE].

#### **4.6 Post-bid Requirements**

Once a Respondent is notified of an accepted bid, they will have sixty (60) calendar days to submit:

- 1) If the proposed project will be owned by the retail customer and not the Respondent, a letter from that customer addressed to the Respondent indicating their agreement to go forward with the project, citing the specific address and system size consistent with the bid awarded;
- 2) In accordance with the Company’s 2022-2025 Renewable Energy Plan, a deposit of [\$] per kW, which will be refunded if the project is completed within 18 months of an executed Interconnection Agreement and payment received and complies with all program requirements and Commission rules. If the project is not completed by that date, the deposit will be treated in accordance with the Extension Policy listed in Section 4.8. The deposit may be refunded at the applicant’s request if interconnection is determined to not be viable due to utility interconnection costs exceeding \$150/kW or Force Majeure events as defined in the Interconnection Agreement in Section XII.A, and prior to signing an Interconnection Agreement. After an Interconnection Agreement is signed, only Force Majeure events will be considered as cause for potential deposit return if a project is withdrawn;
- 3) A non-refundable Interconnection Study Fee of [\$] pursuant to Xcel Energy’s Interconnection Requirements; and
- 4) Engineering documents (one-line diagram, site plan, and Small Generator Interconnection Application-SGIA).

#### **4.7 Changes to System Location**

Once a Respondent has been notified that a bid has been accepted, the project location, interconnection meter number and retail customer cannot be changed. The system size may be

adjusted down but any lost capacity will not be re-allocated to other bidders after the post-bid requirements are fulfilled. If the post-bid requirements are not fulfilled, the bid will be rejected. Public Service then reserves the right at its discretion to accept the next most cost-effective bid from another project from this solicitation or to not allocate the lost capacity.

#### **4.8 Extension Policy**

In the event an extension is necessary to complete a project, the following steps and associated costs are required:

- If the system is not completed within 18 months from an executed Interconnection Agreement and payment, forfeit the application deposit to the Renewable Energy Standard Adjustment account in a per day amount equal to 1/180th of the total deposit amount (as set forth in Section 4.6) for each calendar day past the 18 months, not to exceed the total deposit amount. Liquidated damages will be taken from the deposit until those funds are exhausted. The Respondent must show substantial ongoing progress towards completing the project's milestones.
- If the system is not completed within 24 months from an executed Interconnection Agreement and payment, the project will be cancelled, **and Public Service will have no further financial or other obligation to the Respondent.**

### **Section 5. Delivery and Interconnection**

#### **5.1 Solar Energy Benefit Delivery Requirements**

The point of delivery for the solar energy benefits in response to this RFP will be the customers' on-site solar installation at their facilities.

Successful Respondents will be responsible for providing documentation necessary to obtain interconnection of their On-Site solar installation at each facility.

Respondents may submit documentation for Interconnection to Public Service following the procedures outlined in Section 5.2 below at any time.

#### **5.2 Public Service Interconnection Study Process**

Respondents may choose to request a pre-application data process for the fee described at [Xcel Energy - Pre-application Data Process](#) and can make those requests via email to the personnel listed below. Awardees of the RFP will follow the application submission process to pay the study fee(s) for engineering review. The requirements of interconnection can be found on the Xcel Energy website at [Interconnection | Xcel Energy](#)

Respondents may also contact Public Service with questions. When contacting Public Service respondents should jointly contact the following personnel:

Craig Holt, Manager, Electric Engineering  
Public Service Company of Colorado

1123 West 3<sup>rd</sup> Ave.  
Denver, CO 80223  
[Craig.Holt@xcelenergy.com](mailto:Craig.Holt@xcelenergy.com)  
Phone: 303-571-3477

Kristin Gaspar, Product Portfolio Manager  
Xcel Energy  
1800 Larimer St., Suite 1400  
Denver, CO 80202  
[Kristin.Gaspar@xcelenergy.com](mailto:Kristin.Gaspar@xcelenergy.com)  
Phone: 303-571-7687

Mr. Holt and Ms. Gaspar will be Public Service's points of contact for all questions and requests related to program application and interconnection.

Respondents should note that any proposals selected through this RFP that involve direct interconnection with the Public Service system will be required to submit an Interconnection Application and to enter into an Interconnection Agreement. Such Interconnection Agreement is a separate and distinct agreement from the RECPC.

## **Appendix A**

### **Proposal Forms and Instructions**

As discussed in Section 3, the completed forms, attachments and narrative topic discussions, will comprise a complete proposal. The contents of each form and any special instructions for completing the forms are described below.

If additional space is needed to elaborate on information requested on any form, please attach additional sheets with the heading “Form\_ - Additional Information.”

If certain information is requested that does not apply to the proposal, the Respondent must indicate that the information is not applicable. If appropriate, the Respondent should explain why the information is not applicable.

### **Form A Bid Certification Form**

All proposals must include a completed Bid Certification form signed by an officer or other authorized employee of the bidding company. This form will certify that the information in the proposal is accurate, that the pricing includes all costs for the proposed term of service and that the bidding company agrees to be bound by the terms and conditions contained in the RFP. Further, the bidding company must accept the RECPC included in the RFP, except as specifically noted in writing in the proposal.

### **Form B Bid Cover Sheet**

This form requests general information about the Respondent, the proposed generation technology, type of sale, and capacity.

### **Form C Technical Description**

This form requests a host of information about the proposed configuration of generation equipment, as well as operational characteristics.

### **Form D Construction Milestones**

This form requests Respondents to provide estimated dates for meeting a series of project development and construction milestones for the proposed project.

**Form E**  
**Supply Amount & REC Bid Form**

**REC Pricing**

In Form E - Supply Amount & REC Bid Form, which will be Exhibit 1 of the RECPC, the Respondent must provide a REC price in nominal \$/MWh that would be charged to Public Service during each project year. (To clarify, a nominal price for project year 1 would be the actual price charged in project year 1). For proposals that are selected through this RFP, the proposed REC price will be the purchase price to be paid by Public Service under Article 2 of the RECPC. Public Service will make REC payments to the seller based on the amount of energy produced during a billing period, multiplied by the REC purchase price under the RECPC for that period.

Respondents shall propose prices that are fixed, meaning that the price is the same for each year of the term. Escalating prices or prices that otherwise differ from year to year will not be accepted.

Bid prices must include all costs for which Respondent intends to seek compensation from Public Service, including electric interconnection.

Bid prices may not exceed the bid price cap of [\$/kWh.

**REC Quantity**

In Form E - Supply Amount & REC Bid Form, which will be Exhibit A of the RECPC, the Respondent must also provide a projected number of RECs to be produced during each contract year. The number of projected RECs to be produced each year will be evaluated against data representing expected generation output according to the technology being employed. In the event that annual projection estimates do not appear reasonable in comparison to that data, the Company will conduct due diligence with the Respondent.

**Form F**  
**Anti-Collusion Affidavit**

All Respondents must certify that, among other things, they have not discussed bid pricing with other Respondents.

**Form A – Certification Form**

The Respondent to this [2022] Solar\*Rewards Large Request for Proposals hereby certifies that all of the statements and representations made in this proposal are true to the best of the Respondent's knowledge and belief, and agrees to be bound by the representations, terms, and conditions contained in the RFP.

Submitted by:

\_\_\_\_\_  
(Legal name of firm submitting bid)

Respondent: \_\_\_\_\_

(if different than above)

Signature of an officer of Respondent: \_\_\_\_\_

Print or type name of officer: \_\_\_\_\_

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

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

**Form B – Bid Cover Sheet**

1) Project / Facility Name: \_\_\_\_\_

2) Project Location (city, county): \_\_\_\_\_

3) Respondent Contact:

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone / Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Alternate Respondent Contact:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone / Fax: \_\_\_\_\_

Email: \_\_\_\_\_

4) Estimated Peak Nameplate Capacity kW AC: \_\_\_\_\_

5) Estimated Annual Calendar Year Energy Production (MWh) \_\_\_\_\_

6) Proposed Construction Start Date: \_\_\_\_\_

7) Proposed Commercial Operation Date: \_\_\_\_\_

8) Proposed Project to be Owned by Respondent: Yes / No (Circle One)

9) If the Proposed Project will not be owned by Respondent, the Name and Address of the owner:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

## Form C – Technical Description

- 4) Describe the performance history of major components of the technology as listed above. Provide a list of projects and contact information corresponding to past performance history.

**Form D – Construction Milestones**

| DATE |   | RESULTS ACHIEVED   |
|------|---|--|
|      | 1 | Respondent shall submit [\$] per kW project deposit which is refundable if the project is complete by 18 months from the date of an executed and funded Interconnection Agreement. |
|      | 2 | Respondent shall provide Public Service with an executed Interconnection Agreement from the utility serving the customer.  |
|      | 3 | Respondent shall provide Public Service with copies of applicable inspection reports for the project.  |
|      | 4 | Respondent shall have achieved closing on financing for the solar generating facility or have provided Public Service with proof of financial capability to construct the project. |
|      | 5 | Respondent shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.                                |
|      | 6 | Respondent shall have made the Interconnection of the solar generating facility to the customer's load, and are capable of being energized.  |
|      | 7 | Start-up testing of the project commences.   |
|      | 8 | Commercial Operation has been achieved and the date duly recorded.   |
|      | 9 | All contracts have been executed. All other requisite documentation is on file.  |

**Form E- Supply Amount & \$/MWh REC Bid Form**

|   |  |
|---|--|
| <b>Customer Information</b>                       |  |
| Customer Name **                                  |  |
| Mailing Address                                   |  |
| Contact Name                                      |  |
| Contact Email                                     |  |
| Contact Phone (s)                                 |  |
| Third Party Developer Information (if applicable) |  |
| Company Name                                      |  |
| Mailing Address                                   |  |
| Contact Name                                      |  |
| Contact Phone                                     |  |
| Contact Email                                     |  |
|   |  |
| <b>Solar Facility Installation Information</b>    |  |
| Street Address                                    |  |
| City, State, Zip                                  |  |
| Existing Public Service Customer? (Yes/No)        |  |
| If yes, Xcel Energy Account Number                |  |
| If yes, Xcel Energy Premise Number                |  |
| Projected Date of Commercial Operation            |  |
| System nameplate AC output capacity (kW)          |  |
| Annual solar degradation rate (%)                 |  |

| Project Year | REC Production Estimate (MWh) | \$/MWh |
|--------------|-------------------------------|--------|
| 1            |                               |        |
| 2            |                               |        |
| 3            |                               |        |
| 4            |                               |        |
| 5            |                               |        |
| 6            |                               |        |
| 7            |                               |        |
| 8            |                               |        |
| 9            |                               |        |
| 10           |                               |        |
| 11           |                               |        |
| 12           |                               |        |
| 13           |                               |        |
| 14           |                               |        |
| 15           |                               |        |
| 16           |                               |        |
| 17           |                               |        |

|  |  |  |
|--|--|--|
| <b>18</b>  |  |  |
| <b>19</b>  |  |  |
| <b>20</b>  |  |  |
| <b>Fill in requested data for each project year under contract</b> |  |  |

**Form F-Anti-Collusion Affidavit**

I hereby attest that I \_\_\_\_\_ am the person responsible within my firm for the final decision as to the details, price(s) and amount of this proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.

2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project and will not be so disclosed prior to bid opening.

2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.

3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.

3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.

4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, noncompetitive or other form of complementary bid.

5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.

6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.

7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm

with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.

8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from Public Service Company of Colorado d/b/a Xcel Energy, of the true facts relating to submission of bids for this RECPC.

Submitted by: \_\_\_\_\_  
(Legal signature of responsible individual for developer (or if none, customer))

Printed Name: \_\_\_\_\_  
(Legal printed name of responsible individual)

Title: \_\_\_\_\_  
(Business title of responsible individual)

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

Company: \_\_\_\_\_

Business Address: \_\_\_\_\_



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 with respect to the Photovoltaic Energy and associated Renewable Energy Credits generated by the community solar garden photovoltaic solar system installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Alternating Current (AC) nameplate capacity of \_\_\_\_ kW. If SRC Producer is not the PV System Owner, the PV System Owner (as defined in Section 1.15 below) has separately provided assurances in the form of Exhibit E attached hereto to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

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, Section 3877 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3877, and the Electric Tariffs, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$10/kW of the PV System’s Alternating Current (AC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

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

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

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

1.11 “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 system at the Solar Garden Site.

1.12 “Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.13 “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 4.7 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.

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

1.15 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

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

1.17 “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 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 and associated RECs subject to this Agreement.

1.18 “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.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “REC” or “Renewable Energy Credit” shall have the meaning set forth in 4 CCR 723-3-3652. 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 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.

1.21 “REC Price” shall mean the price for RECs purchased by Public Service’s customers under its Renewable\*Connect programs, which price is \$\_\_\_\_\_ per REC.

1.22 “REC Sale Election” means an election or deemed election by SRC Producer, as further set forth in Section 2.1, to sell all RECs associated with Subscribed Energy to Public Service.

1.23 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid if SRC Producer is entering into this Agreement as a result of an award in a competitive solicitation.

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

1.25 “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, which may be updated by the mutual agreement of the Parties from time to time.

1.26 “SRC Allocation” shall mean the monthly allocation, stated in kilowatt-hours (“kWh”) 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 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service monthly through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.27 “SRC Application” shall mean the application submitted to Public Service by or on behalf of SRC Producer that relates to the PV System and SRC Producer’s sale of Photovoltaic Energy and/or RECs generated by the PV System to Public Service, as may be further set forth in the RFP or other information made available by Public Service.

1.28 “SRC 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 \$500 for each user that logs into the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles 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.

1.29 "SRC Bid" shall mean SRC Producer's bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.30 "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 and associated RECs 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.

1.31 "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.

1.32 "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.

1.33 "Standard Offer" shall mean any standard offer for community solar gardens made available by Public Service from time to time, including all terms and conditions applicable thereto.

1.34 "Subscribed Energy" shall mean Photovoltaic Energy that is attributable to any Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month, whether or not such Subscription, taken together with all other Subscriptions, meets the Subscriber Mix Commitment.

1.35 "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 3.2 below

1.36 "Substantial Completion" shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full agreed

upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.37 “Unsubscribed Bundled Rate” shall mean the rate to be paid by Public Service hereunder for Unsubscribed Energy together with the RECs associated therewith, which rate shall be Public Service’s average hourly incremental cost of electricity over the most recently completed 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 ten (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.

1.38 “Unsubscribed Energy” shall mean Photovoltaic Energy that is not attributable to any Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month.

1.39 “Unsubscribed Unbundled Rate” shall mean the rate to be paid by Public Service hereunder for Subscribed Energy that fails to meet the Subscriber Mix Commitment without the RECs associated therewith, which rate shall be the Unsubscribed Bundled Rate *minus* the REC Price.

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

1.41 “WREGIS” means the Western Renewable Energy Generation Information System.

## **ARTICLE II**

### **TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS**

2.1 Election of the Sale of RECs Associated with Subscribed Energy. Prior to entering into this Agreement, SRC Producer has irrevocably elected [to / not to] sell and deliver to Public Service all of the RECs produced by the PV System and associated with Subscribed Energy. If SRC Producer has elected for Subscribers to retain the RECs for Subscribed Energy, Public Service will retire those RECs in each Subscriber’s name, in accordance with the Monthly Subscription Information provided by SRC Producer. SRC Producer understands that compensation under this Agreement will differ depending on such election. For the avoidance of doubt, SRC Producer shall sell and deliver to Public Service all RECs associated with Unsubscribed Energy, notwithstanding the foregoing election.

2.2 Sale and Delivery of Subscribed Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Meter (1) all Subscribed Energy and, (2) if SRC Producer has made a REC Sale Election, all of the RECs associated with such Subscribed Energy. Such election shall be deemed to have been irrevocably made prior to or simultaneously with entering into this Agreement by SRC Producer to sell and

deliver either all or none of the RECs associated with Subscribed Energy. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in Section 2.4, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer's sole consideration for the sale and delivery of Subscribed Energy and associated RECs, if applicable.

### 2.3 SRC Credits.

(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 and associated RECs, as applicable, produced by the PV System shall be the full responsibility of the SRC Producer.

2.4 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Subscribed Energy and (if SRC Producer has made a REC Sale Election) the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid is positive, as set forth in the SRC Bid or the Standard Offer, as applicable, Public Service shall pay SRC Producer the price of \$\_\_\_\_\_ per MWh of Subscribed Energy, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such Subscribed Energy and (if applicable) the associated RECs. For the avoidance of doubt, if SRC Producer has made a REC Sale Election, the foregoing price is the bundled price to be paid by Public Service for SRC Producer's delivery of Subscribed Energy together with associated RECs. If SRC Producer has not made a REC Sale Election, the foregoing price is the price to be paid by Public Service for SRC Producer's deliver of Subscribed Energy only. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs, as applicable, recorded at the Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.5 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Subscribed Energy and (if SRC Producer has made a REC Sale Election) the associated RECs is negative, as set forth in the SRC Bid or the Standard Offer, as applicable, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$\_\_\_\_\_ in full

satisfaction of SRC Producer's payment obligation for Subscribed Energy and (if applicable) associated RECs. For the avoidance of doubt, if SRC Producer has made a REC Sale Election, the foregoing payment amount is a bundled payment amount for Public Service's acceptance of Subscribed Energy together with associated RECs. If SRC Producer has not made a REC Sale Election, the foregoing payment amount is a payment amount for Public Service's acceptance of Subscribed Energy only. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.6 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of Subscribed Energy and (if SRC Producer has made a REC Sale Election) the associated RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs, as applicable, is negative, as set forth in the SRC Bid or the Standard Offer, as applicable, SRC Producer shall pay Public Service the price of \$\_\_\_\_\_ per MWh of Subscribed Energy, in full satisfaction (together with the SRC Credits) of Public Service's acceptance of such Subscribed Energy and (if applicable) the associated RECs. For the avoidance of doubt, if SRC Producer has made a REC Sale Election, the foregoing price is the bundled price to be paid by SRC Producer for Public Service's acceptance of Subscribed Energy together with associated RECs. If SRC Producer has not made a REC Sale Election, the foregoing price is the price to be paid by SRC Producer for Public Service's acceptance of Subscribed Energy only. Unless otherwise paid in accordance with Section 2.5, payments shall be made by check to Public Service by SRC Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.7 Purchase and Sale of Unsubscribed Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell, and Public Service agrees to purchase all of the Unsubscribed Energy and associated RECs produced by the PV System. Public Service shall pay SRC Producer a price per kWh for the Unsubscribed Energy and associated RECs purchased pursuant to this section that is equal to the Unsubscribed Bundled Rate. Payments for such purchases shall be made monthly by check to SRC Producer for the Unsubscribed Energy and associated RECs, as applicable, recorded at the Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.7 is SRC Producer's sole consideration for the sale and delivery of Unsubscribed Energy and associated RECs generated by the PV System.

2.8 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 Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs, as applicable, shall transfer to Public Service at the Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. If SRC Producer has made a REC Sale Election, SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.9 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 or, if SRC Producer has not made a REC Sale Election, RECs associated with Subscribed Energy to SRC Subscribers, during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System except for those sold to SRC Subscribers as set forth in this Section 2.9.

2.10 Payments. Except as otherwise expressly set forth in this Agreement, if any payments are due from SRC Producer to Public Service hereunder, such payments shall be made by check to Public Service by SRC Producer within thirty (30) days of Public Service issuing a bill to the SRC Producer. Public Service may set-off any amounts owed by SRC Producer hereunder against any other payments that Public Service owes to SRC Producer. If SRC Producer does not timely make any payment due hereunder in full, the unpaid balance shall bear interest at the rate of one- and one-half percent (1.5%) per month.

### **ARTICLE III**

#### **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., 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 will be duly authorized to sell and deliver to Public Service Subscribed Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the Unsubscribed Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) If SRC Producer is not the PV System Owner, the PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) 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 and in the form of Exhibit E attached hereto.

3.2 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.  
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and 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) SRC Producer shall ensure that each Subscription is sized to represent at least one (1) kW of the PV System's nameplate rating and to supply no more than 200% of the SRC Subscriber's reasonably expected average annual total consumption of electricity; provided that the minimum one (1) kW sizing requirement herein will not apply to Subscriptions owned by Eligible Low-Income CSG Subscribers, as defined in Rule 3877(f) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3877.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service. 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) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall sell and maintain Subscriptions, such that for each Production Month, the SRC Allocations corresponding to Subscriptions held by residential customers, small commercial customers, agricultural customers, Eligible Low-Income CSG Subscribers and Eligible Low-Income Service Providers is collectively at least 50 percent of the total allocation of Photovoltaic Energy for such Production Month (including Subscribed Energy and Unsubscribed Energy). SRC Producer shall also sell and maintain Subscriptions, such that for each Production Month, the SRC Allocations corresponding to Subscriptions held by the classes or categories of SRC Subscribers as set forth in Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers and Eligible Low-Income Service Providers, residential, small commercial, or agriculture (that qualify for residential or small commercial rate classes) rate class service customers (R, RE-TOU, RD, RD-TDR, C, C-TOU), in the percentages of the SRC Allocation for each such class or category as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid or the Standard Offer, as applicable. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be

entitled to payment for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment (i) if SRC Producer has made a REC Sale Election, at the Unsubscribed Bundled Rate, and (ii) if SRC has not made a REC Sale Election, at the Unsubscribed Unbundled Rate. In addition to the foregoing rates, Public Service shall be entitled to charge SRC Producer for the amount of any SRC Credit paid to SRC Subscribers in respect of Subscribed Energy and (if applicable) associated RECs attributable to such portion of the SRC Allocation that fails to meet the Subscriber Mix Commitment. If any payments are due from SRC Producer to Public Service pursuant to this Section 3.7(e), such payments shall be made by check to Public Service by SRC Producer within thirty (30) days of Public Service issuing a bill to the SRC Producer. If any payments are due from Public Service to SRC Producer, such payments shall be made in accordance with the payment terms in Section 2.4.

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

In addition to any other rights and remedies set forth herein, (i) 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 SRC Producer's preceding requirements set forth in this Section 3.2 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.2 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.3 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten (10) SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of five megawatts (5 MW) or less.

(c) The PV System will 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 the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than five (5) 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 CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to ten (10) 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 will be registered with the WREGIS and its production data regularly reported to the WREGIS.

(f) If the PV System has a nameplate capacity of two (2) MW or greater, the PV System will comply with the standards of construction and operation set forth in 40-2-127(3.5), C.R.S.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.3.

3.4 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 3.2 above.

3.5 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure 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.

3.6 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, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, 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 Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company including current status of each Construction Milestone as set forth in the SRC Bid or SRC Application, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System 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 six-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 PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid or Standard Offer, as applicable, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and 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 PV System is authorized to operate by Public Service; 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 ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the date that the Interconnection Agreement has been entered into between Public Service and SRC Producer and the SRC Producer makes a deposit payment under the Interconnection Agreement as provided in Rule 3882(d)(I) of the Commission's Rules Regulating Electric Utilities, 4 Code of Colorado Regulations 723-3-3882, Public Service shall provide to SRC Producer a written confirmation of such deposit, 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, destroyed or is otherwise out of operation, 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 and associated RECs, as applicable, 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 (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar\*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

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 and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining Unsubscribed Energy to be purchased and sold in accordance with Article II hereof and to determine the amount RECs attributable to the Unsubscribed 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 Eligible Low-Income CSG Subscriber and Eligible Low-Income Service Provider, as defined in Rule 3877(f) and Rule 3877(g), respectively, of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3877, meets the requirements set forth in 4 CCR 723-3-3877(f)-(g) (as applicable). 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 3.2 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. If 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. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of an Eligible Low-Income CSG Subscriber or an Eligible Low-Income CSG Subscriber as defined under 4 CCR 723-3-3877(f)-(g) in the PV System, Public Service reserves the right to suspend the application of SRC Credits, or to apply SRC Credits to SRC Subscribers but to charge SRC Producer for the amount of such SRC Credits in accordance with Section 2.7, 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 Unsubscribed Bundled Rate or Unsubscribed Unbundled Rate, as applicable and as further described in Section 2.7 of this Agreement for any Photovoltaic Energy 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 3.2(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 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. Upon Commercial Operation, 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 (1) MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid or [SRC Application], a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's SRC 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.**

(a) The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid or (if awarded under the Standard Offer) from the date of Public Service's acceptance of the SRC Application (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove

it from the Solar\*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

(b) The SRC Producer may prevent termination of this Agreement under Section 5.1(a) by (1) providing Public Service notice its intent to achieve Substantial Completion beyond six months and no later than 12 months from the Target Completion Date; and (2) delivering a second Deposit to Public Service. Such notice and delivery of a second Deposit must be made no later than six months prior to the Target Completion Date. The second Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following 30 months from the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the second Deposit.

5.2 Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.2 and 3.3 above, Public Service shall install, and thereafter own, operate, maintain and read the 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 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 Meter is installed. Public Service reserves the right to replace the 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 5.3 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 Subscribed Energy shall be treated and priced as Unsubscribed Energy in accordance with Section 3.2(e) (as though such Subscribed Energy were attributable to the portion of SRC Allocations failing to meet the Subscriber Mix Commitment) 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.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the

interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, 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 3.2 and 3.3 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, (a) nothing in the Interconnection Agreement shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. 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 5.6. 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.

5.7 Curtailment. To the extent permitted by applicable law, Public Service, or the transmission or distribution provider, if different, may require SRC Producer (or the PV System Owner), and SRC Producer (and the PV System Owner) will comply with any such requirement, to curtail the delivery of Photovoltaic Energy from the PV System for any non-economic reason, including without limitation, transmission or distribution congestion, emergency conditions, scheduling or market participation, planned or unplanned outages, action or inaction by any governmental authority or market regulatory body or organization. Neither SRC Producer nor the PV System Owner will be entitled to any compensation for any such curtailment.

## **ARTICLE VI**

### **FORCE MAJEURE**

#### **6.1 Definition of Force Majeure.**

(a) The term “Force Majeure,” as used in this Agreement, means causes or events, in each case, to the extent 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 RECs (if being sold to Public Service) 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 and associated 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 SRC Producer 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 (an “Event of Default”):

(a) A breach by either Party of its material covenants or warranties set forth in this Agreement, including as incorporated by reference herein, that is not excused by Force Majeure, and such breach remaining unremedied for 30 days after notice thereof having been given by the non-defaulting Party; and

(b) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or

any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 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.)

7.3 Failure of either Party to assert an Event of 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.

7.4 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.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

## **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 makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues. 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.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively "Indemnified Parties") harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature ("Losses") 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.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer's responsibility therefor.

## **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 ("Applicable Law"). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3877 (or any successor rule or rules of the Commission) and Public Service's then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the "Effective Time") shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

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 the PV System 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 (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 without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

## **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 an electronic signature or 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; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. 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 to assignment, in form acceptable to Company, to any of SRC Producer's lenders 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, and the SRC Bid and Standard Offer, as applicable (which SRC Bid or Standard Offer terms and conditions are hereby incorporated herein by reference) constitute the entire understanding and agreement between the Parties with respect to the PV System, 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 the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid or the Standard Offer, as applicable, and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid or Standard Offer, as applicable, shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.



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

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**

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

**Exhibit A**

**DESCRIPTION OF SOLAR GARDEN SITE**

**Exhibit B**

**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.

(a) 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.

(b) 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 (ii) 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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **Exhibit C**

### **Construction Milestones**

| DATE |    | RESULTS ACHIEVED  |
|------|----|---|
|      | 1  | SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low-income subscriber summary).  |
|      | 2  | The SRC Producer Agreement has been executed.   |
|      | 3  | SRC Producer has received site acquisition/control.   |
|      | 4  | Site Survey and soils report have been obtained.  |
|      | 5  | SRC Producer has obtained all variance allowances and planning approval.  |
|      | 6  | SRC Producer has obtained all required permits.   |
|      | 7  | SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System. |
|      | 8  | SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.       |
|      | 9  | SRC Producer and all required counterparties have executed the Interconnection Agreement.   |
|      | 10 | The SRC Producer has started PV System construction.  |
|      | 11 | SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.  |
|      | 12 | SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.  |
|      | 13 | SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.  |
|      | 14 | Substantial Completion has been achieved and the date duly recorded.  |
|      | 15 | All other SRC application documentation reasonably requested by Public Service is on file with Public Service.  |
|      | 16 | SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.  |

## **Exhibit D**

### **Subscriber Mix Commitment**

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers and Eligible Low-Income CSG Service Providers: \_\_\_\_%.

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as small commercial rate class service customers (C or C-TOU): \_\_\_\_%.

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR), not including Eligible Low-Income CSG Subscribers: \_\_\_\_%.

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as agricultural: \_\_\_\_%.

Percentage of SRC Allocation donated to SRC Subscribers who qualify as direct-billed Eligible Low-Income CSG Subscribers: \_\_\_\_%.

## **Exhibit E**

### **PV System Owner Acknowledgement**

The individual or entity named below (“PV System Owner”) desires to acknowledge to Public Service receipt of the Solar\*Rewards Community Producer Agreement (the “Producer Agreement”) dated \_\_\_\_\_ by and between Public Service Company of Colorado, d/b/a/ Xcel Energy, a Colorado corporation (“Public Service”) and SRC Producer (as defined therein), for which PV System Owner has duly authorized SRC Producer to enter into and perform under such agreement. Capitalized terms used herein without definition shall have the meanings assignment to them in the Producer Agreement.

1. PV System Owner acknowledges and agrees that it has received a copy of the Producer Agreement.
2. PV System Owner has read the Producer Agreement, understood it, and acknowledges it as legally binding documents that affects the PV System (as defined in the Producer Agreement). PV System Owner represents as of the date hereof that it holds legal title or otherwise has full rights of ownership in and to the PV System. PV System Owner agrees that it shall notify Public Service immediately (in advance if possible) if it no longer holds such title or has such rights at any time during the term of the Producer Agreement.
3. PV System Owner represents to Public Service as of the date hereof, and covenants so long as PV System Owner owns the PV System, that SRC Producer, or its successor (which successor shall be authorized by PV System Owner and promptly made known to Public Service) is and will be duly authorized by PV System Owner (which authorization has not been revoked, terminated or limited in any respect) to enter into the Producer Agreement and perform its duties, responsibilities, and obligations thereunder, 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 therein.
5. PV System Owner acknowledges that if at any point during the term of the Producer Agreement, the PV System Owner transfers ownership of the PV System to a new PV System Owner, and SRC Producer does not cause the new PV System Owner to execute and deliver to Public Service a PV System Owner Acknowledgement in substantially similar form as this PV System Owner Acknowledgement within 30 days of such transfer, Public Service may terminate the Producer Agreement immediately upon notice to SRC Producer.
6. PV System Owner further acknowledges that Public Service is relying on the representations and covenants above to carry out its obligations under the Producer Agreement. PV System Owner hereby expressly waives and releases any and all claims, now known or hereafter known, against Public Service, and its officers, directors, managers, employees, agents, affiliates, advisors, successors, and assigns (collectively, “Releasees”), arising out of relating to the Producer Agreement and this PV System Owner Acknowledgement. PV System Owner covenants not to make or bring any such claims against Public Service or any other Releasee, and

forever releases and discharges Public Service and all other Releasees from liability under such claims.

7. PV System Owner will defend, indemnify, and hold harmless Public Service and all other Releasees against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees, the cost of enforcing any right to indemnification under this agreement, and the cost of pursuing any insurance providers, arising out of or resulting from any claim by SRC Producer or any other third party in connection with the Producer Agreement or this agreement.

8. 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. This agreement is binding on and shall inure to the benefit of Public Service and PV System Owner and their respective successors and assigns. All matters arising out of or relating to this PV System Owner Acknowledgement shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction). This PV System Owner Acknowledgement is subject to applicable law, including the rules and regulations of the Colorado Public Utilities Commission, and Public Service's tariff for electric service, as each may be modified from time to time.

BY SIGNING, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTOOD, AND AGREE TO ALL OF THE TERMS OF THIS AGREEMENT.

[PV SYSTEM OWNER]

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

Name: \_\_\_\_\_

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

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



**[2022] Request for Proposals  
Energy and Renewable Energy Credits from Qualified Community Solar Gardens**

**Issued Date:** \_\_\_\_\_  
**Proposal Submission Due Date:** \_\_\_\_\_

Xcel Energy Inc., headquartered in Minneapolis, Minnesota, is a U.S. investor-owned holding company parent of four major electric and natural gas utilities. The four Xcel Energy operating companies have regulated utility operations in the eight Western and Midwestern states of: Minnesota, Wisconsin, North Dakota, South Dakota, Michigan, Colorado, Texas, and New Mexico. The operating companies of Xcel Energy provide, collectively, energy-related products and services to approximately 3.7 million electric and 2.1 million natural gas customers. More information about Xcel Energy is available at [www.xcelenergy.com](http://www.xcelenergy.com).

Public Service Company of Colorado (“Public Service” or the “Company”) is the Xcel Energy operating company in Colorado. Public Service often does business under the name of Xcel Energy. As part of Public Service’s Solar\*Rewards Community (SRC) program, this Request for Proposals (“RFP”) seeks bids for the sale of energy and transfer of renewable energy credits (“RECs”) from qualified Community Solar Gardens (“CSGs”) in conformance with the Company’s 2020-21 Renewable Energy Standard Compliance Plan (“RES”) as stated in Decision No. C20-0431 within Proceeding No. 19A-0369E. The CSGs are to be wholly located in Public Service’s electric service territory in Colorado. The term “community solar garden” is defined in the Colorado Public Utilities Commission (Commission) Rules Regulating Electric Utilities, 4 Code of Colorado Regulations (“CCR”) 723-3-3877 and the term “renewable energy credit” is defined within Rule 3652. This RFP is subject to the Commission’s rules and regulations governing CSGs. For the avoidance of doubt, the Rules set forth in 4 CCR 723-3-3875 through 3883 as they exist as of the date of this RFP, and as further described in the RES, will govern this RFP and the Solar\*Rewards Community Producer Agreement, a form of which is attached hereto as Appendix B (SRC Producer Agreement) regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules following such date. In accordance with the RES, the Company is seeking up to [ ] MW AC (alternating current) from this solicitation to account for capacity acquisitions for [2022]. However, the Company reserves the right to reject all bids under this solicitation and reissue a new solicitation at its discretion.

Eligible respondents to this RFP (“Respondents”) must be the CSG Subscriber Organization of the proposed CSG, consistent with those terms defined in Rule 3877. Respondents are requested to provide bids pursuant to the instructions provided herein. This RFP is limited to bids for energy and RECs that are generated from CSGs with a gross nameplate capacity greater than or equal to 10 kW and less than or equal to 5 MW alternating current (“AC”).

This RFP contains several sections, including an Introduction, Proposal Logistics, Bid Submittal, Evaluation Process and Assumptions, SRC System Application, Delivery and Interconnection, and SRC Producer Agreement.

Please provide all of the information requested to enable the Company to properly evaluate your approach and viability as a Respondent for the sale of energy and RECs from a CSG. All information provided, and the extent of completeness, will be used to evaluate the bid. Feel free to provide additional information not requested here that you feel would help in our evaluation.

The Bids, RFP and all files, designs, specifications and other appended or related data are the property of the Company and are delivered only for the purpose of enabling each potential Respondent to prepare and submit a proposal in response hereto. In the event that Bid documents are considered confidential to the Respondent, the Company reserves the right to retain Bids and associated documents in accordance with Company records retention policies, but will deploy standard data-management practices for secure and confidential information.

The Company will, in its sole discretion and without limitation, evaluate proposals and proceed in the manner the Company deems appropriate, which may include deviation from the Company's expected evaluation process (in accordance with Commission decisions, rules, and regulations), the waiver of any requirements and the request for additional information.

Respondents that submit proposals agree to do so without legal recourse against the Company, its affiliates, or their respective employees, directors, officers, customers, agents or consultants for rejection of their proposals or for failure to execute an agreement for any reason. The Company and its affiliates shall not be liable to any Respondent or other party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. By submitting its proposal, each respondent waives any right to challenge any valuation by the Company of its proposal or any determination of the Company to select or reject its proposal. Each Respondent, in submitting its proposal, irrevocably agrees and acknowledges that it is making its proposal subject to and in agreement with the terms of this RFP.

## **SRC [2022] RFP**

### Section 1. Introduction

Public Service is an operating utility company of Xcel Energy, Inc. Public Service is issuing this RFP seeking bids to construct new solar renewable energy systems in Colorado that meet the following requirements:

1. Uses a proven and UL-approved (or other nationally recognized testing laboratory) solar electric generation technology to generate electricity and meets applicable interconnection guidelines.
2. The system qualifies as a CSG per Rule 3877(a).
3. The system will be located and interconnected on property wholly within Public Service's electric service territory.
4. Substantial Completion of the system must be achieved within 18 months from an executed Interconnection Agreement and payment (the "Target Completion Date"). If the system is not Substantially Completed by the Target Completion Date, the Respondent's deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of such deposit per day for each day following the Target Completion Date that the system has not been brought to Substantial Completion not to exceed such deposit. If the system has not been brought to Substantial Completion after 24 months, Public Service will consider the system incomplete and have the right to remove it from the Solar\*Rewards Community program with any associated capacity forfeited, and without any further financial or other obligation to the Respondent as a result of such actions at the Company's discretion. For purposes of this RFP, "Substantial Completion" means the date that all construction and installation of the system is completed, and the system is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the respondent having requested scheduled witness tests for the system. Public Service will comply with its response obligations to the Respondent under applicable rules, regulations, and tariffs with respect to interconnection, and to the extent that Public Service fails to do so, the Respondent will receive a day-for-day extension to the required Substantial Completion date for each day of Public Service's delay.
5. No CSG subscriber organization may own more than a 40 percent interest in the CSG after the CSG has operated commercially for 18 months.
6. The system has a gross nameplate capacity greater than or equal to 10 kW AC and less than or equal to 5 MW AC.
7. The Respondent must abide by the commitments set out in Section 3.1.
8. The Respondent must sell all unsubscribed power plus the associated RECs to Public Service. The price for such unsubscribed power plus the associated RECs is the prior calendar year's average hourly incremental cost of electricity supply over the immediately preceding calendar year.

9. The Respondent must sell all subscribed power and either transfer the associated RECs to Public Service, or elect for subscribers to retain the RECs (in which case, Public Service will retire such RECs on subscribers' behalf), at the price terms stated in the SRC Producer Agreement.
10. The Respondent must agree to all of the terms and conditions of the SRC Producer Agreement.

Public Service invites bids from Respondents who are capable of meeting the requirements of the RFP.

This introductory section describes the type, amount and timing of solar resources sought in this SRC RFP. Section 2 covers logistics such as where and when bids must be submitted, bid evaluation fees, and policies and procedures. Section 3 describes the bid submittal process. Section 4 addresses the evaluation process and assumptions. Section 5 provides requirements of the SRC application. Section 6 provides requirements related to delivery and interconnection.

#### 1.1 Resource Acquisition Objectives

Colorado Revised Statutes ("C.R.S.") Section 40-2-124, sets forth the Colorado RES, and establishes the amount of energy to be generated from eligible energy resources that Public Service is required to obtain. C.R.S. Section 40-2-127, henceforth referred to as the Community Solar Gardens Act, provides in part that Public Service is to meet a portion of its RES obligations through the acquisition of energy from CSGs. The Company is seeking up to [ ] MW AC (alternating current) from this solicitation to account for capacity acquisitions for [2022]. Of the [ ] MW available, all projects shall have a minimum aggregate commitment of 50% of CSG capacity that corresponds to: (i) eligible low-income CSG subscriber and eligible low-income CSG service providers, (ii) small commercial, (iii) residential not including eligible low-income CSG subscribers, and (iv) agricultural. Any commitments above the requirements shall receive additional consideration for every 10% additional commitment over the requirement. Subscribed energy that falls short of these requirements or additional commitments, in aggregate, will be treated as unsubscribed energy (except that if the Respondent has elected for subscribers to keep RECs, those subscribers may still retain RECs for subscribed energy that falls short of any subscriber mix commitment and Respondent will be charged Public Service's then-current REC price). However, the Company reserves the right to reject any or all bids under this solicitation and reissue a new solicitation at its discretion.

#### 1.2 Eligible Technologies

All solar electric generating systems wholly located and interconnected in Public Service certificated territory that qualify as community solar gardens under Colorado law and the Commission Rules are eligible to bid into this RFP. The determination of whether any technology meets these criteria is at the sole discretion of Public Service.

#### 1.3 Interconnection

Interconnections shall follow the Commission's Rules on Interconnection Procedures and Standards (Rules 3850 – 3859). The Respondents will be responsible for entering into an

Interconnection Agreement with Public Service for each proposed CSG prior to energy production from the solar generating system.

The solar generating system installation under this RFP must connect to Public Service's electric system.

For successful Respondents, Public Service will provide to the Respondent an estimate of the interconnection costs for each installation site. The Respondent is responsible for paying Public Service the full amount of any interconnection cost and maintaining adequate process and communication so as to enable successful interconnection under standard Public Service operating procedures without impacting CSG required timelines. This information can be found on the Public Service website. Previous costs incurred or estimated costs for interconnection of CSGs are in no way representative of the size or amounts of future interconnection or substation upgrade costs that may be incurred by the Respondent for the interconnection of its proposed CSG.

Due to the number of cumulative bids, award recipients for CSGs and existing interconnection applications, limited capacity may be available at certain substations or over certain distribution lines without substantial upgrades being necessary. Multiple data requests and bids may be received on a substation or feeder serving the bid location. No queue positions shall be set prior to a "Deemed Complete" (Rule 3853(d)(V)) date for the interconnection application associated with a CSG award. Previously submitted interconnection requests cannot transfer interconnection progress or queue positions to CSG awards. If Respondent intends to interconnect its proposed system at the distribution level, Respondent is encouraged to submit a Pre-Application Data Request to obtain relevant and readily available distribution system information that may help identify possible constraints to interconnection. Pre-Application Data Requests for other sites are not reflected in Pre-Application Data Request results. More information can be found about the Pre-Application Data Request process at:

[https://www.xcelenergy.com/working\\_with\\_us/how\\_to\\_interconnect/pre-application\\_data\\_process](https://www.xcelenergy.com/working_with_us/how_to_interconnect/pre-application_data_process).

If Respondent intends to interconnect its proposed system at the transmission level, Respondent is encouraged to visit Public Service's Transmission Business Relations webpage found at <https://www.transmission.xcelenergy.com/Interconnections> which provides a non-exhaustive list of contacts and resources with respect to the Company's transmission interconnection policies, processes, and procedures.

Respondent will be solely responsible for complying with any and all applicable laws, regulations, tariffs, rules, decisions, and guidance (including Public Service's policies and procedures) with respect to interconnection of the proposed system.

#### 1.4 Pricing

Pricing for all photovoltaic energy, including any RECs (if offered in the bid), generated by the system, or aggregate of systems, is required to be \$/MWh units for any bid. All bids offered in \$/MWh will be rounded at least to the second decimal place for bid evaluation

purposes and pricing shall be a constant price for each year of the term specified in the SRC Producer Agreement. The price Respondent bids is the bundled REC and subscribed energy price if Respondent offers to sell RECs associated with subscribed energy to Public Service, and it is the unbundled subscribed energy-only price if Respondent elects for subscribers to retain the RECs associated with subscribed energy. The pricing forms and instructions are in Appendix A of this RFP.

Should a Respondent's bid pricing contemplate payments being made to Public Service (i.e., negative bid price); such payments will be flowed through to Public Service's customers in a manner to be determined.

1.5 Environmental and Renewable Energy Credits

The RECs associated with subscribed and unsubscribed energy (constituting all of the RECs associated with the solar energy production) must be transferred to Public Service, unless Respondent elects in its bid for subscribers to keep the RECs for subscribed energy. For RECs associated with unsubscribed energy and for bids electing to sell all RECs associated with subscribed energy, the conveyance of RECs to Public Service includes the transfer to Public Service of all environmental attributes, emission reduction credits, and renewable energy credits, as defined by Public Service. For bids electing for subscribers to retain all RECs associated with subscribed energy, Public Service will retire such RECs in each subscriber's name, in accordance with the monthly subscription information provided by Respondent.

1.6 Special Conditions Related to CSG Subscribers

1. The retail customer who is a CSG subscriber will continue to purchase the energy used at their premises from Public Service at the standard tariff rate. The retail customer will be credited on their bill a calculated dollar amount based on their portion of the energy generated at their proposed CSG project at the rate specified in the Company's SRC tariff. The customer's bill credit changes annually and the current year fixed rates are stated in the SRC Service tariff.
2. Per Decision No. C16-1075 in Proceeding No. 16A-0139E dated November 23, 2016, all subscribers to any CSG awarded through this solicitation will receive bill credits based on the class average methodology. This practice is a continuation from the approval in Decision C16-0747 in Proceeding No. 13A-0836E and the Decision No. R20-0099 in Proceeding No. 19A-0369E.
3. Public Service will own and read the kWh net meter, but the Respondents will reimburse Public Service for the cost of the meter and remote communications equipment.
4. Respondents set their own price and terms for solar energy benefits sold to the retail customer/CSG subscriber from the solar installation. Respondents must enter into the Interconnection Agreement and SRC Producer Agreement with Public Service.

5. Respondents must sell unsubscribed energy and RECs to Public Service at Public Service’s average hourly incremental cost of electricity supply over the most recent calendar year.
6. Respondents must keep their subscriber information current on a monthly basis. The subscriber information must be updated in the Solar\*Rewards Community online portal before the last 5 business days of the month and must state the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. The subscriber information must also denote for each subscriber which one of the following categories such subscriber falls within: (i) eligible low-income CSG subscriber and eligible low-income CSG service providers, (ii) small commercial, (iii) residential not including eligible low-income CSG subscribers, (iv) agricultural, or (v) none. If any subscriber list information does not comply with any of the foregoing for one or more subscribers, Public Service reserves the right to treat the subscribed energy for such subscriber(s) as unsubscribed.

#### 1.7 Meteorological and System Operation Data

A Net Meter to measure all energy output from the CSG will be installed by Public Service at the Respondent’s sole cost. The CSG site shall be designed and constructed such that Public Service will have direct access to the Net Meter during normal business hours. The Respondent will be responsible for providing an active, wired telephone or data line and related equipment necessary to provide Public Service real-time access to 15-minute interval data stored at the Net Meter regarding the renewable energy produced by the CSG. In the event that the Respondent also collects meteorological data at the CSG site, such meteorological data shall also be made available to Public Service on a real-time basis.

### Section 2. Proposal Logistics

#### 2.1 Schedule

As shown on the following schedule, Public Service will issue the RFP on [DATE]. Bids are due by 4:00 PM, Mountain Time, [DATE]. Public Service will aim to announce the bid winners on or about [DATE] but reserves the right to announce the winners before or after that date. The Company will hold an informational “Respondents’ Meeting” within 2 weeks of the issuance of the RFP.

| Activity                         | Date |
|----------------------------------|------|
| Issue Date                       | []   |
| Bids Due                         | []   |
| Targeted Award Announcement Date | []   |
| Substantial Completion Date      | []   |

## 2.2 Proposal Submission

All proposals will be accepted until 4:00 P.M. Mountain Time on the date indicated in Section 2.1. All proposals must be uploaded to the Public Service electronic bid submission system. To gain access to the submission system, please complete the Intent to Bid form linked below at least two weeks prior to the proposal due date listed in Section 2.1. If access is not granted within two weeks of submitting the form, please send an email to: [solarrewardscommunity@xcelenergy.com](mailto:solarrewardscommunity@xcelenergy.com).

Intent to Bid Form and & RFP information can be found on the RFP page located on the [Solar\\*Rewards Community Developer Resources Page](#).

Proposals received later than the due date and time indicated will be rejected, unless Public Service determines, in its sole discretion, to consider such proposals.

## 2.3 Information Policy

To obtain additional information about this RFP, Respondents may submit only written requests. These requests should be sent to the Public Service SRC RFP Project Manager. Questions or requests may be transmitted via email or U.S mail; email is preferred.

### **Public Service SRC RFP Project Manager**

Joshua Kirui  
Xcel Energy  
1800 Larimer St., Suite 1400  
Denver, CO 80202  
[solarrewardscommunity@xcelenergy.com](mailto:solarrewardscommunity@xcelenergy.com)

Public Service will maintain a log of all inquiries and coordinate the preparation of a written response. Once a response is prepared, Public Service will post the information on the [Xcel Energy](#) website. Public Service has established this information policy to ensure that all Respondents have the same knowledge about the bidding process.

In addition, Public Service will hold an informational, “Respondents’ Meeting” within two weeks of issuance of the RFP. At this meeting, Public Service will accept questions from Respondents and provide feedback or indicate a timeframe for feedback to questions. After the meeting, Public Service will post all responses to questions from the meeting on the [Xcel Energy](#) website.

## 2.4 Bid Evaluation Fees

All respondents are required to pay to the Company a non-refundable bid evaluation fee with each proposal submitted according to the Bid Fees table below.

### **S\*RC RFP Bid Fees**

| <b>MW Range</b> | <b>Bid Fee</b> |
|-----------------|----------------|
| >1 to 2 MW      | \$750          |
| >2 to 5 MW      | \$1,500        |
| >5 to 10 MW     | \$3,000        |

If any Respondent provides more than one bid price per year, more than one forecast of energy/REC production, or more than one interconnection location an additional bid evaluation fee must be provided as each variant will be considered a unique bid. Failure to provide sufficient bid evaluations fees will result in the rejection of the bid and forfeiture by the Respondent of the bid evaluation fee provided.

Payments may be made by wire transfer or by check. Checks should be made out to “Public Service Company of Colorado” and must be sent to the following address as part of each individual bid proposal.

Xcel Energy Solar\*Rewards Community Program  
P.O. Box 59  
Minneapolis, MN 55440-0059

Each bid shall consist of the following:

- one Energy/REC delivery amount for each year;
- one prescribed term length of twenty years; and
- an annual price (a price for each year of contract term).

Those Respondents that are allowed to enroll in the program will also be charged an annual site license fee of \$300, unless they previously have paid for and received a site license. Licenses are for each user that logs into to the SRC Application and Subscriber Management System as defined in the SRC Agreement. This amount is subject to change in future contract cycles with the software platform vender.

## 2.5 Bid Forms

All bids must include a complete set of forms for each bid. Using the forms will ensure consistency in bid submission, interpretation and evaluation by Public Service. If a Respondent is submitting more than one proposal, a separate set of forms must be submitted for each bid. The forms, together with instructions for each form, are provided in Appendix A of this RFP. Each bid submitted will require a separate set of forms and a separate bid evaluation fee.

## 2.6 Clarification of Bids

While evaluating bids, Public Service may request additional information about any item in the bid. Such requests will be made in writing, usually via e-mail. The Respondent is required to provide a written response to the Public Service Solar\*Rewards RFP Project Manager within five (5) business days, or Public Service may deem the Respondent to be non-responsive and stop evaluating the bid. To facilitate meeting the five-day response timeframe, Public Service encourages Respondents to provide one or more alternate points of contact for these questions, with e-mail being the preferred method of communication.

## 2.7 Conditions of RFP

This RFP does not commit Public Service to pay any costs incurred in the preparation of a bid in response to this RFP or to procure or contract for any services offered in response to this RFP. Public Service reserves the right to modify or withdraw this RFP, to negotiate with all qualified Respondents to resolve technical or contractual specifications, and/or to reject any or all bids and to terminate consideration of a bid or bids at any time. Public Service reserves the right to evaluate bids and proceed in the manner it deems appropriate, which, in accordance with applicable Commission decisions, rules, and regulations, may include deviation from the expected evaluation process. Public Service and its affiliates shall not be liable to any Respondent or other party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. By submitting its bid, each Respondent waives any right to challenge any valuation by the Company of its bid or any determination of the Company to select or reject its bid. Each Respondent, in submitting its bid, irrevocably agrees and acknowledges that it is making its bid subject to and in agreement with the terms of this RFP and that it has not and will not engage in any anti-competitive conduct related to its bid, including, without limitation, improperly using any confidential information of any other person, collusion with any other bidder, attempting to influence the outcome of this RFP in any manner that does not comport with Commission rules and the terms of this RFP, or submitting a bid that it does not intend in good faith to honor in accordance with Commission rules and the terms of this RFP and the SRC Producer Agreement. Each Respondent shall be liable for all of its costs incurred to prepare, submit, respond or negotiate its bid and any resulting agreement and for any other activity related thereto, and Public Service shall not be responsible for any of the Respondent's costs.

Prior to bid acceptance, Public Service reserves the right to:

- Request from Respondents information that is not explicitly detailed in this document;
- Reject any or all proposals;
- Reject any proposals that, at Public Service's sole discretion, are not complete or contain irregularities, or waive irregularities in any bid that is submitted;
- Accept or reject any proposals not received on or before the due date specified;
- Reject bids for reasons other than price or energy production;
- Reject any or all bids due to a presumption of collusion between Respondents or any anti-competitive conduct;
- Accept other than the lowest cost proposal(s);

- Obtain clarification from Respondents concerning proposals; and
- Conduct discussions with selected Respondents concerning the development of the proposed CSG.

## 2.8 Confidentiality

Each page of the RFP response should be clearly identified as to whether it contains confidential or proprietary information. Public Service reserves the right to release any bids to agents or consultants for purposes of bid evaluation. Public Service's disclosure standards and policies will contractually bind such agents or consultants. Regardless of the confidentiality, all such information may be subject to review by the appropriate state jurisdiction, or any other governmental authority or judicial body with jurisdiction relating to these matters and may be subject to legal discovery. Under such regulatory and legal circumstances, Public Service will make reasonable efforts to preserve Respondents' confidential information, including requesting that it be filed under seal. Public Service reserves the right to publicly disclose summary information regarding the bid information in a form and manner that does not reveal the identity of any particular Respondent. Without limiting the foregoing, each Respondent acknowledges and agrees that Public Service may make an informational filing with the CPUC within thirty (30) days following the bid deadline that includes average bid price, number and capacity of bids received and number of bidders, and that Public Service may review anonymized bids as well as evaluation criteria with CPUC Trial Staff prior to finalizing bids, in each case without liability to any Respondent. Public Service reserves the right to retain any and all bid documentation as required under the Company's record retention policy.

## 2.9 Withdrawal of or Addenda to RFP

Public Service reserves the right to modify, supplement or withdraw this RFP by issuing one or more addenda at any time during this solicitation. Such addenda shall become a part of this RFP and any additional responses required of Respondents by any such addenda shall become part of each bid.

## Section 3. Bid Submittal

### 3.1 Minimum Bid Eligibility Requirements

This section lists the minimum requirements that all bids must meet to be eligible to participate in this solicitation. Bids that do not comply with these requirements will be deemed ineligible and will not be considered for further evaluation.

- Bids must include all content requirements described in Section 3.2, including clear and complete written descriptions of all information requested and completed forms.
- Bids must clearly specify all pricing terms in accordance with Section 1.4.
- Bids must demonstrate an acceptable level of development and technology risk, as determined by the Company's evaluation team.
- Respondents must provide the non-refundable bid evaluation fee with each proposal submitted for each site (as further described in section 2.4).

- Bids must be for 20 year terms only, in accordance with Section 2.4.
- Subscriber Requirements – All projects shall have a minimum aggregate commitment of 50% of CSG capacity that corresponds to: (i) eligible low-income CSG subscriber and eligible low-income CSG service providers, (ii) small commercial, (iii) residential not including eligible low-income CSG subscribers, and (iv) agricultural. Bids must provide a subscriber acquisition plan that details how the minimum commitment will be met and maintained throughout the duration of the project. Any commitments above the requirements shall receive additional consideration for every 10% additional commitment over the requirement. If, during the term, the project fails to meet such minimum subscriber commitments, the shortfall in such commitments in aggregate will be treated as unsubscribed energy.
- Interconnection Site Moves are Prohibited – Project bid characteristics will remain as originally bid. Bids will be limited to a single site/parcel and point of interconnection. A waitlist will be maintained to backfill any awarded bid capacity that has been withdrawn by the bidder. Further details of the waitlist are provided in Addendum A.

### 3.2 Bid Content Requirements

This section outlines the content and format requirements for all bids submitted in response to this [2022] Solar\*Rewards Community RFP. Bids that do not include the information requested in this section will be ineligible for further evaluation unless the information requested is not applicable or relevant to a given bid. If it appears that certain information is inadvertently omitted from a bid, Public Service may contact the Respondents to obtain the additional information.

The first section of each bid must contain an Executive Summary that provides an overview of the bid's characteristics, including any unique aspects or benefits. The second section of the bid must include the set of forms included in Appendix A. These forms will contain essential information about each bid, and a separate set of forms and related information must be submitted with each bid. The third section of the bid must include other bid information, which must be in narrative form under specific topic headings.

A complete bid will include the following three components:

1. Executive Summary
2. Complete set of applicable forms  
Appendix A of this RFP document includes detailed descriptions of each of these forms, as well as any special instructions for completing the forms.
  - Form A - Bid Certification and Anti-Collusion Form
  - Form B - Bid Cover Sheet
  - Form C - Technical Description
  - Form D - Construction Milestones
  - Form E - Supply Amount & REC Bid Form

- Form F - Subscriber Mix Commitment
- Form G - Bid Submittal Checklist
- Form H - Anti-Collusion Affidavit

3. Narrative Topics Discussion

In addition to completed forms, each bid must also include a thorough written discussion of each of the following topics. The narrative topics should be organized under the following headings, with each heading beginning on a separate page.

- Development Experience, including solar gardens
- Proposed CSG Description
- Energy and REC Production Profile
- Siting and Permitting Plan
- Operations and Maintenance Plan

***Developer Experience.*** All bids must describe the Respondent's qualifications and experience in developing, constructing, commissioning and operating generation facilities similar to the proposed facility within the United States within the last five (5) years. The response should include the time it took to complete the projects beginning with engineering approval to begin construction and ending with the date of commercial operation.

If an engineering, procurement, and construction team is in place, the bid should identify the members of the team; if such a team is not in place, the bid must set forth the Respondent's plan for assembling such team (including process and timing).

***Proposed CSG Description.*** All bids must set out a description of the proposed CSG, including:

1. Interconnection point of facility location,
2. Technology and equipment used for generation, and
3. Gantt (or similar project management chart) of expected milestones.

The Gantt chart of development activities should include (at a minimum) entering major equipment and construction subcontracts, target completion dates for financing, site acquisition/control, engineering, permitting, equipment procurement, construction, startup and commissioning, and dates for system operation. Bids must provide a development time that will meet the Substantial Completion requirement set forth in this RFP. If bids are awarded, Respondent agrees to provide Public Service a quarterly update of this Gantt chart reflecting current CSG progress and timing or other updates of this information, as requested by Public Service, so as to ensure a common understanding of customer subscriber impacts and interconnection requirements. Bidders are advised that submission of such schedules is informational only and does not replace or supersede any portion(s) of the interconnection process and procedures or the SRC Producer

Agreement.

***Energy and REC Production Profile.*** All bids must provide information on expected annual REC production for each production year. Each Respondent must provide the inputs and assumptions used in the calculation of this estimate as well as an indication of what application, if any, was used in the calculation of this estimate. The proposed county in which the development will be located and expected point of interconnection should be used in calculating the estimated production profile of the facility. Submissions in Excel format are preferred.

***Permitting Plan.*** Bids must describe and list all permits and approvals that will be required for the county in which the CSG is proposed. Describe all other federal, state and local permits and approvals that will be required for the proposed CSG, but not limited to:

- Zoning permit
- Variance approvals
- Building permits
- Land use permit

***Subscriber Mix Commitments.*** Bids are required to provide a breakdown of the respective percentages committed to each subscriber type; residential, small commercial, agricultural, eligible low-income CSG subscribers, or eligible low-income service providers. The combined percentage must be at least 50% of these subscriber types to meet the RFP minimum requirement. Bids must provide subscriber acquisition plan that details how the minimum commitment will be met and maintained throughout the duration of the project.

***Operations and Maintenance Plan.*** Respondents shall provide a full description of the operations and maintenance plans and labor arrangements for the generation facilities associated with their bids. This description should also include the expected costs and the financing of these costs.

#### Section 4. Evaluation Process and Assumptions

The bid evaluation process will include an assessment of economic and non-economic factors as described through this section. The economic evaluation will identify the lowest cost bids based upon the specifics of each Respondent's pricing proposal. The non-economic criteria will be used to further reduce the number of eligible bids to within the approved range, if necessary. The Company may also choose to evaluate the non-economic criteria to verify the ability of a Respondent to meet its economic commitments. Any commitments or bid criteria that lead to the assignment of points, and thereby influences the RFP award, are binding on Respondent (if the bid is awarded) for the full 20-year term of the CSG contract, and failure to maintain such commitments or meet such criteria may result in treatment of energy as unsubscribed, termination or other remedies that Public Service may be permitted to exercise to protect its customers and the integrity of the RFP solicitation.

The Company will award bids based on the following scoring matrix:

| Criteria                                   | Scoring |
|--|---------|
| Economic                                   | 40      |
| Preparedness                               | 20      |
| Subscriber Mix                             | 20      |
| Community Benefits                         | 10      |
| Developer Experience                       | 5       |
| Supplemental Characteristics               | 5       |
| Subscriber Mix – Low Income (Bonus Points) | 20      |

#### 4.1 Eligibility Screening

The information provided in each bid will first be evaluated for completeness and consistency with the proposal submittal requirements outlined in Section 3 of this RFP. CSGs must interconnect directly to the Public Service Company system. Incomplete bids, including those that do not respond to one or more of the requirements described in 3.2 may be eliminated from contention without further notice.

#### 4.2 Economic Analysis

Levelized energy costs of the eligible bids will be calculated to determine potential winning bids based on the REC price per MWh. Levelized energy costs will be calculated from the specifics of the bid pricing, and any other costs associated with accepting energy and RECs from the facility. Lowest score gets 40, proportionally scored downward based on differential from lowest price bid into the RFP. Public Service will compare bids for bundled REC and subscribed energy against bids for subscribed energy only as described in Section 4.8, below.

#### 4.3 Preparedness

Preparedness points will be broken out as indicated below.

- 10 points - Site Control  
Requires either proof of lease (or similar) option or executed agreement.
- 5 points - Site Viability  
Demonstrated proof of steps taken to “de-risk” the project site. Steps to de-risk a site can include (but are not limited to) the following: constraints analysis, environmental site assessment, geotechnical report, survey, title commitment, etc.
- 5 points - Project Viability  
Demonstrated proof of steps taken to evaluate project costs and incorporate them into the bid price. Proof of project viability can include estimated property taxes for the life of the project, permitting costs and viability based on existing land use code, etc. (e.g., demonstrated knowledge of interconnect cost estimates that are included in bid price, local renewable energy property tax, permitting viability, etc.). This section also may contain pricing variance percentages for materials and labor that are able to be accommodated within the bid price.

#### 4.4 Subscriber Mix

Requirement - All projects shall have a minimum aggregate commitment of 50% of CSG capacity that corresponds to (i) eligible low-income CSG subscriber and eligible low-income CSG service providers, (ii) small commercial, (iii) residential not including eligible low-income CSG subscribers, (iv) agricultural. Each project must specify the respective percentage commitment for each of the foregoing categories and must provide a subscriber acquisition plan that, among other things, describes how the Respondent expects to meet each such target percentage.

##### Additional Subscriber Commitments Above Requirement

Bids with commitments above the minimum requirement (50%) shall receive 4 additional points for every 10% additional commitment over the requirement, up to 20 points maximum.

##### Donation to direct billed low-income customers

Bids will receive 2 points for every 10% of CSG capacity donation to direct billed low-income customers, up to 20 bonus points maximum.

#### 4.5 Community Benefits

- Receive up to 5 points for community benefits, including but not limited to: job training, education, ecological, or siting on a government owned/leased property or within the same community to serve local community members.
- Receive 5 points if bid is community-based as defined in Rule 3652(d), and has REC evaluated in cost.

#### 4.6 Developer Experience

Developer experience points will be broken out as indicated below. Developers with negative experience or withdrawn/cancelled projects will be docked points accordingly.

- 2.5 pts - Prior solar development success  
Proof of developing and completing a project of similar size and scope regardless of territory, points can be lost for lack or delay of previous program fulfillment.
- 2.5 pts – Demonstrated knowledge of relevant CO rules and recent changes  
Demonstrated knowledge (document/explanation) of relevant CO rules and recent changes. Narrative of relevant existing CO rules around CSG and interconnection requirements in CO as they relate to project bid(s).

#### 4.7 Supplemental Characteristics

Receive 5 points for bids that site on property that is abandoned, contaminated, formerly contaminated, or perceived to be contaminated. Examples include landfills, abandoned mine sites, and land that has been disturbed through previous industrial and other use.

#### 4.8 Evaluation Assumptions

The following planning assumptions will underlie Public Service's bid evaluation process.

*Utility Discount Rate and Cost of Capital*

Public Service will use a discount rate of [6.80]% based on its current weighted after-tax cost of capital.

*Bonus for Community-Based Projects<sup>1</sup>*

Public Service is allowed to reflect an additional bonus amount of RECs generated from a Community-Based Project, as defined in Rule 3652(d). This bonus amount will be calculated and added to the estimated number of RECs produced. This adjusted value will be used in the economic analysis of the bid when comparing it against other bids made in response to this RFP. If a Respondent qualifies under Rule 3652(d) it agrees to assist Public Service in obtaining any approvals or declaratory rulings from the Colorado Public Utilities Commission, as deemed necessary by Public Service, that such proposed CSG qualifies as a Community-Based Project.

*Bid Pricing Comparison*

Public Service will compare pricing for bids that elect to sell RECs associated with subscribed energy to Public Service against pricing for bids that elect for subscribers to retain RECs by adding the then-current REC price under Public Service's Renewable\*Connect programs to the unbundled subscribed energy price in bids that elect for subscribers to retain the RECs.

4.9 Evaluation Team

A bid evaluation team has been formed to develop the RFP, and to evaluate and select bids. Members of the bid evaluation team include personnel from various departments within Public Service, each with different responsibilities.

4.10 Notification of Bid Results

Public Service intends to notify Respondents of the results of the bid evaluation and begin contract development before [DATE], but reserves the right to announce the winners before or after that date. If awarded bids are proposed on the same substation or feeder, the Company will stagger the announcement of bid notifications in order to allow higher scored bids the opportunity to lock in interconnection queue position ahead of lower scored bids. The staggering of bid notifications does not guarantee interconnection queue position. The Company will make the appropriate communication to these bid awardees. This will enable projects with higher bid score to begin the completeness review and the interconnection study process earlier than lower scoring bids. Awarded bids/sites will not be accepted as CSG interconnection applications prior to receiving written notification of their award. Public Service strongly encourages bidders to begin preparing interconnection application documents so they are ready for any bid awards received, and ensuring all document requirements are met upon first submission as bid awards alone do not provide any interconnection queue position or assurance. Details on interconnection application requirements can be found at: [Community Solar Garden Developers | Xcel Energy](#)

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<sup>1</sup> Each kilowatt-hour of solar energy generated by a Colorado community-based project, as defined by Rule 3652(d), is counted as generating 1.5 Renewable Energy Credits.

#### 4.11 Post-bid Requirements

Once a Respondent is notified of an accepted bid, they will have a firm ninety (90) calendar days to complete an SRC Application process in the following steps:

- 1) A submitted SRC Application as described in Section 5 of this RFP that includes a specific location (latitude and longitude) and comports with the location requirements described in Section 4.12. No material deviations (substation, feeder assignment or substantial moves) will be allowed post bid submission.
- 2) In accordance with the Company's 2022-2025 Renewable Energy Plan, a deposit of [\$] per kW, which will be refunded if the project is completed within 18 months of an executed Interconnection Agreement and payment received and complies with all program requirements and Commission rules. If the project is not completed by that date, the deposit will be treated in accordance with the Extension Policy listed in Section 4.8. The deposit may be refunded at the applicant's request if interconnection is determined to not be viable due to utility interconnection costs exceeding \$150/kW or Force Majeure events as defined in the Interconnection Agreement in Section XII.A, and prior to signing an Interconnection Agreement. After an Interconnection Agreement is signed, only Force Majeure events will be considered as cause for potential deposit return if a project is withdrawn;
- 3) In accordance with Rule 3882(d), submitted funds into an escrow account of an amount equal to \$100/kW of the CSG's nameplate capacity that will be refunded once the CSG owner makes an interconnection agreement deposit payment.
- 4) An executed SRC Producer Agreement. Failure to sign the agreement may result in suspension from the program.
- 5) A State Certificate of Good Standing.
- 6) If Respondent intends to interconnect the system at the distribution level, a non-refundable Interconnection Study Fee pursuant to the Company's Interconnection Requirements. This is required at the time of line diagram, site plan and Small Generation Interconnection Application submission. If Respondent intends to interconnect the system at the transmission level, Respondent shall pay any and all fees as required by the Company in accordance with its then-current policies, practices, and procedures with respect to transmission interconnection.
- 7) Engineering documents (one-line diagram, site plan, and interconnection application).

Failure to meet post-bid requirements may result in suspension from the program.

#### 4.12 System Location

Upon award of the bid the Respondent must submit a permanent location for the new interconnection application that matches the location awarded in the RFP bid. The location of CSGs may not result in more than 5 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 10 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

The system must be wholly located and interconnected within Public Service's certificated service territory and must interconnect directly to the Public Service system. Requests for locations outside of the service territory for any reason will be denied.

#### 4.13 Posting of Winning Bids

After the selection and notification of the winning Respondents, the Company reserves the right to post on its website a subset of or in total the following information applicable to each Bid selected:

- 1) Geographic location of the CSG including any or all of the following once finalized: address, latitude and longitude, position on a map or other location designation
- 2) Electrical connectivity information such as substation name, transformer number, and feeder number.
- 3) Nameplate capacity of the awarded CSG;
- 4) Bid price;
- 5) System tracking (fixed axis, single axis for example);
- 6) Name of the CSG Owner, CSG parent organization, and/or CSG Subscriber Organization (if different than the CSG Owner); and
- 7) Contact information (e-mail address and telephone number) of the CSG Owner or CSG Subscriber Organization.

### Section 5. SRC System Application

All winning bids are required to complete the SRC Application process described in Section 4.11. This includes the completion of the SRC Application that can be found on the Xcel Energy website. Winning bids have up to 90 calendar days to submit the on-line application and complete the steps called out in Section 4.11.

#### 5.1 Application Requirements

Requirements are listed below:

- The deposit and escrow requirements must be met when the application is submitted.
- A certificate of good standing from the Secretary of State of the State of Colorado for the project company that will own and operate the proposed system.

- A signed SRC Producer Agreement.

All other requirements and application process instructions are located in the Solar\*Rewards Community section on the Xcel Energy website:

[Community Solar Garden Developers | Xcel Energy](#)

## Section 6. Delivery and Interconnection

### 6.1 REC Delivery Requirements

The point of delivery for the energy and RECs in response to this RFP will be the interconnection point of the CSG installation.

Successful Respondent(s) will be responsible for providing documentation necessary to obtain interconnection of their CSG installation at each facility.

### 6.2 Public Service Interconnection Study

Respondents must submit an interconnection study request. The requirements of this request can be found on the Xcel Energy website:

[Community Solar Garden Developers | Xcel Energy](#).

Respondents may also contact Public Service with questions. When contacting Public Service respondents should jointly contact the following personnel:

Mr. Travis Dorr  
Senior Engineer, DER Integration  
Public Service Company of Colorado  
1123 West 3<sup>rd</sup> Avenue  
Denver CO 80223  
[Travis.A.Dorr@xcelenergy.com](mailto:Travis.A.Dorr@xcelenergy.com)

Mr. Joshua Kirui  
CO Associate Product Portfolio Manager  
Xcel Energy  
1800 Larimer St., Suite 1400  
Denver, CO 80202  
[solarrewardscommunity@xcelenergy.com](mailto:solarrewardscommunity@xcelenergy.com)

Mr. Kirui and Mr. Dorr will be Public Service's points of contact for all questions and requests related to program application and interconnection.

Respondents should note that, for any bids selected through this RFP, the winning Respondents will be required to submit an Interconnection Application and Interconnect Study Fee (and if the Respondent is intending to interconnect at the transmission level, submit any other applications or fees as determined by the Company in its reasonable discretion in accordance with its then-current policies, practices, and procedures with respect to transmission interconnection), and enter into an Interconnection Agreement with

Public Service. Such Interconnection Agreement is a separate and distinct agreement from the SRC Producer Agreement.

6.3 Interconnection Queue

Positions in the interconnection queue will be (a) if interconnecting at the distribution level, determined by the date and time stamp of the interconnection request as defined in Rule 3853 (d)(IV) and Rule 3853 (d)(V) or (b) if interconnecting at the transmission level, determined in accordance with the transmission rules, regulations, tariffs, decisions, policies, procedures, and guidance that apply to the system (as determined by the Company in its discretion), in each case of subsections (a) and (b) only if the Respondent has met all requirements of the SRC Application Process outlined in Section 4.11 of this RFP.

## Appendix A

### Bid Forms and Instructions

As discussed in Section 3, the completed forms, attachments and narrative topic discussions, will comprise a complete bid. The contents of each form and any special instructions for completing the forms are described below.

If additional space is needed to elaborate on information requested on any form, please attach additional sheets with the heading “Form \_\_\_\_ - Additional Information.”

If certain information is requested that does not apply to the bid, the Respondent must indicate that the information is not applicable. If appropriate, the Respondent should explain why the information is not applicable.

In addition to submitting a hardcopy of the bid with the completed forms, Respondents must also include a CD or flash drive in Microsoft® Word and/or Excel formats.

### Form A Bid Certification

All bids must include a completed Bid Certification form signed by an officer or other authorized employee of the Respondent. This form will certify that the information in the bid is accurate, that the pricing includes all costs for the proposed term of service, and that the Respondent agrees to be bound by the terms and conditions contained in the RFP. Further, the Respondent must accept the SRC Producer Agreement included in the RFP.

### Form B

#### Bid Cover Sheet / Site Information

This form requests general information about the Respondent, the proposed generation technology, type of sale, and capacity of the bid. It additionally requests information on the proposed site including known substation, feeder, and exiting/queued generation.

### Form C Technical Description

This form requests information about the proposed configuration of generation equipment, as well as operational characteristics.

### Form D Construction Milestones

This form requests that Respondents provide estimated dates for meeting a series of development and construction milestones for the proposed CSG.

### Form E Supply Amount & REC Bid Form

## Appendix A

### Bid Pricing

In Form E - Supply Amount & REC Bid Form, the Respondents must provide a bid price in nominal \$/MWh during each production year. The Company will round all bids at least to the second decimal place for bid evaluation purposes. (To clarify, a nominal price for production year 1 would be the actual price charged in production year 1.)

All unsubscribed energy will be purchased at the Company's average hourly incremental cost of electricity supply over the most recent calendar year.

Respondents shall provide a constant price for each year of the term specified in the SRC Producer Agreement.

### REC Quantity

In Form E - Supply Amount & REC Bid Form, Respondents must also provide a projected number of RECs to be produced during each contract year. The number of projected RECs to be produced each year will be evaluated against data representing expected generation output according to the technology being employed. Annual projection estimates which do not appear reasonable in comparison to that data will be questioned and may cause the bid to be modified or rejected.

### Form F Subscriber Mix Commitment

This form requests Respondents to set forth the percentage of the allocation of the CSG's capacity that must have a minimum aggregate commitment of 50% of CSG capacity that corresponds to: (i) eligible low-income CSG subscriber and eligible low-income CSG service providers, (ii) small commercial, (iii) residential not including eligible low-income CSG subscribers, and (iv) agricultural. It also requests any capacity committed to donation to direct billed low-income customers.

### Form G Bid Submittal Checklist

This form sets forth the bid submittal checklist that also must be completed and provided by Respondent to Public Service in response to this 20[ ] RFP.

### Form H Anti-Collusion Affidavit

All Respondents must certify that, among other things, they have not discussed bid pricing with other Respondents.

Form A – Bid Certification

The undersigned Respondent hereby certifies that all of the statements and representations made in this proposal are true to the best of the Respondent's knowledge and belief, the information in the bid is accurate, and the pricing includes all costs for the proposed term of service. The Respondent agrees to be bound by the terms and conditions contained in the RFP. The Respondent accepts the contract included in the RFP. This form may be executed by electronic signature and/or may be delivered via electronic means (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000 and the Colorado Uniform Electronic Transactions Act) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Submitted by: \_\_\_\_\_  
(legal name of firm)

Respondents: \_\_\_\_\_  
(if different than above)

Signature of an officer of Respondents: \_\_\_\_\_

**Print or type** name of officer: \_\_\_\_\_

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

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

Form B – Bid Cover Sheet / Site Information

1) CSG / Facility Name: \_\_\_\_\_

2) CSG Location: \_\_\_\_\_

3) Respondents Contact:

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone / Fax: \_\_\_\_\_

Email: \_\_\_\_\_

4) Alternate Respondents Contact:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone / Fax: \_\_\_\_\_

5) Nameplate Capacity kWAC: \_\_\_\_\_

6) Estimated Annual Calendar Year Energy Production (MWh): \_\_\_\_\_

7) Election to either sell or have subscribers retain all RECs associated with subscribed energy (Sell/Retain): \_\_\_\_\_

8) Proposed Construction Start Date: \_\_\_\_\_

9) Proposed Commercial Operation Date: \_\_\_\_\_

10) As applicable, please list and provide an organizational chart of all affiliates and parent companies of:

- a) The Subscriber Organization
- b) The SRC Owner
- c) The SRC Producer

11) Proposed Site Information:

- a) Has the site completed a Pre-Application Data Request, and if so when was it completed (please attach to bid for reference)

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- b) Please provide the following information for your site if it is known:

- Substation Name \_\_\_\_\_
- Feeder Name \_\_\_\_\_
- Transformer Existing Generation \_\_\_\_\_
- Transformer Queued Generation \_\_\_\_\_

Form C – Technical Description

- 1) Describe the solar technology, including: system size, the number of PV panels, the number of inverters, ancillary equipment, etc.

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- 2) Provide relevant specifications about the proposed generation, inverter and other significant equipment such as brand, model, fabricator, rating, size, capabilities, etc.

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- 3) Describe the configuration of the proposed generation equipment, including system tracking, tilt, azimuth, etc.

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- 4) Describe the performance history of major components of the technology as listed above. Provide a list of projects and contact information corresponding to past performance history.

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Form D – Construction Milestones

| DATE |    | RESULTS ACHIEVED   |
|------|----|--|
|      | 1  | Respondent shall have submitted post bid information (deposit & escrow, proposed site location, and subscriber summary).   |
|      | 2  | Respondent has executed the SRC Producer Agreement.  |
|      | 3  | Respondent shall have received site acquisition/control.   |
|      | 4  | Respondent obtains site survey and soils report  |
|      | 5  | Respondent shall have obtained all variance allowances and planning approval.  |
|      | 6  | Respondent shall have obtained all required permits.   |
|      | 7  | Respondent shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the proposed CSG.                     |
|      | 8  | Respondent and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the Facility. |
|      | 9  | Respondent and all required counterparties have executed the Interconnection Agreement.  |
|      | 10 | Respondent shall have started garden construction.   |
|      | 11 | Respondent shall provide Public Service with copies of applicable inspection reports for the proposed CSG.   |
|      | 12 | Respondent shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.  |
|      | 13 | Respondent shall have made the Interconnection of the CSG generating facility and is capable of being energized.   |
|      | 14 | Commercial Operation has been achieved and the date duly recorded.   |
|      | 15 | All other requisite SRC application documentation is on file.  |
|      | 16 | Respondent completes proposed CSG within 30 months of receiving an award.  |

Form E - Supply Amount & REC Bid Form

|  |  |
|--|--|
| Respondent Information   |  |
| Respondent Name(s)   |  |
| Mailing Address  |  |
| Contact Email address(es)  |  |
| Contact Phone(s)   |  |
| Solar Facility Installation Information  |  |
| County   |  |
|  |  |
| Existing Public Service Customer? (Yes/No)   |  |
| If yes, Xcel Energy Account Number   |  |
| If yes, Xcel Energy Premise Number   |  |
| Projected Date of Commercial Operation   |  |
| System nameplate AC output capacity (kW)   |  |
| Annual solar degradation rate (%)  |  |
| Election to sell or have subscribers retain all RECs associated with subscribed energy (Sell/Retain) |  |

| Production Year  | Production Estimate (MWh) | \$/MWh |
|--|---------------------------|--------|
| 1  |                           |        |
| 2  |                           |        |
| 3  |                           |        |
| 4  |                           |        |
| 5  |                           |        |
| 6  |                           |        |
| 7  |                           |        |
| 8  |                           |        |
| 9  |                           |        |
| 10   |                           |        |
| 11   |                           |        |
| 12   |                           |        |
| 13   |                           |        |
| 14   |                           |        |
| 15   |                           |        |
| 16   |                           |        |
| 17   |                           |        |
| 18   |                           |        |
| 19   |                           |        |
| 20   |                           |        |
| Fill in requested data for each production year under contract |                           |        |

Form F – Subscriber Commitments

1) Provide a breakdown of the percentage of the allocation that must have a minimum aggregate commitment of 50% of CSG capacity that corresponds to: (i) eligible low-income CSG subscriber and eligible low-income CSG service providers, (ii) small commercial, (iii) residential not including eligible low-income CSG subscribers, and (iv) agricultural.

2) What percentage of the CSG capacity is committed to donation to direct billed low-income customers?

## Form G – Bid Submittal Checklist

|                          |   |
|--------------------------|---|
| <input type="checkbox"/> | Executive summary   |
| <input type="checkbox"/> | All applicable forms complete   |
| <input type="checkbox"/> | Narrative topics discussions  |
| <input type="checkbox"/> | <ul style="list-style-type: none"> <li>Development Experience</li> </ul>            |
| <input type="checkbox"/> | <ul style="list-style-type: none"> <li>Proposed CSG Description</li> </ul>          |
| <input type="checkbox"/> | <ul style="list-style-type: none"> <li>Energy and REC Production Profile</li> </ul> |
| <input type="checkbox"/> | <ul style="list-style-type: none"> <li>Siting and Permitting Plan</li> </ul>        |
| <input type="checkbox"/> | <ul style="list-style-type: none"> <li>Operations and Maintenance Plan</li> </ul>   |

### Form H – Anti-Collusion Affidavit

I hereby attest that I \_\_\_\_\_ am the person responsible within my firm for the final decision as to the details, price(s) and amount of this proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.

2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project and will not be so disclosed prior to bid opening.

2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.

3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.

3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.

4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, noncompetitive or other form of complementary bid.

5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.

6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.

7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm

with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.

8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from Public Service Company of Colorado d/b/a Xcel Energy, of the true facts relating to submission of bids for this RFP.

Submitted by: \_\_\_\_\_  
(Legal signature of responsible individual for developer (or if none, customer))

Printed Name: \_\_\_\_\_  
(Legal printed name of responsible individual)

Title: \_\_\_\_\_  
(Business title of responsible individual)

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

Company: \_\_\_\_\_

Business Address: \_\_\_\_\_

Appendix B  
SRC Producer Agreement



Application: \_\_\_\_\_

## **DISTRIBUTED ENERGY RESOURCE INTERCONNECTION AGREEMENT**

This DISTRIBUTED ENERGY RESOURCE INTERCONNECTION AGREEMENT (“Agreement”) is entered into by and between Public Service Company of Colorado, d/b/a Xcel Energy, a Colorado corporation, having a mailing address of P.O. Box 840, Denver, Colorado, 80201, hereinafter referred to as “Public Service,” and [CUSTOMER NAME, ENTITY TYPE AND STATE OF FORMATION] having a mailing address [MAILING ADDRESS], hereinafter referred to as “Customer.” The Customer and Public Service are sometimes also referred to in this Agreement jointly as “Parties” or individually as “Party.”

In consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

### **I. SCOPE AND PURPOSE**

- A) Establishment of Point of Common Coupling. This Agreement is intended to provide for the Customer to interconnect and operate a DER in parallel with the Public Service electric distribution system at [PREMISES ADDRESS], as more specifically identified in Exhibit C and shown in the Exhibit A one-line diagram.
- B) This Agreement contains the terms and conditions under which the Customer may interconnect and operate in parallel the DER with the Public Service electric distribution system and the facilities required by the Customer for such interconnection.
- C) This Agreement does not authorize the Customer (or the Host, if applicable) to export power or constitute an agreement to purchase or wheel the Customer’s power. Other services that the Customer (or Host, if applicable) may require from Public Service, or others, may be covered under separate agreements or the Public Service Electric Tariffs, or both.
- D) This Agreement does not cover FERC-jurisdictional generating system installations.
- E) The Technical Requirements for interconnection are set forth in a separate Technical Requirements document, entitled “Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation,” dated August 6, 2020, a copy of which has been made available to the Customer and the receipt of which Customer hereby acknowledges. The Technical Requirements, as may be modified from time to time, are hereby incorporated and made part of this Agreement by this reference.

### **II. DEFINITIONS**

- A) “Agreement” – this Distributed Energy Resource Interconnection Agreement.
- B) “Area EPS” - an EPS that serves Local EPSs. Note: Typically, an Area EPS has primary



access to public rights-of-way, priority crossing of property boundaries, etc.

- C) “Commission” - the Public Utilities Commission of the State of Colorado.
- D) “Customer” - the party or parties that will own and/or operate the DER and shall be responsible for meeting the requirements of this Agreement. “Customer” may be the Host, or it may be an owner or operator of the DER duly authorized by the Host to own and/or operate the DER on the Premises and to perform all obligations of Customer under this Agreement.
- E) “Dedicated Facilities” - the equipment that is installed due to the interconnection of the DER and not required to serve other Public Service customers, as more specifically described on Exhibit B attached hereto and made a part hereof.
- F) “Distributed Energy Resource” or “DER” - the Customer's source of electric power connected to Public Service’s electric distribution system pursuant to this Agreement, including retail renewable distributed generation (as defined in the Commission’s rules for electric generation), other small generation facilities for the production of electricity, Energy Storage Systems, or combination of any of these elements, but shall not include the interconnection facilities not owned by the interconnection customer. “DER” includes an interconnection system or a supplemental distributed energy resource device that is necessary for compliance with IEEE Standard 1547-2018, until January 1, 2022 or such time new distributed energy resource devices applying for interconnection will comply with IEEE 1547-2018 (but not including any later amendments or editions of such standard). “DER” also includes any controls, relays, switches, breakers, transformers, inverters, and associated wiring and cables, up to the Point of Common Coupling.
- G) “Electric Tariffs” - Public Service’s electric tariffs as in effect and on file with the Commission from time to time.
- H) “Energy Storage System” - any commercially available, customer-sited system or utility-sited system, including batteries and batteries paired with on-site generation, that does not generate energy, that is capable of retaining, storing, and delivering electrical energy by chemical, thermal, mechanical, or other means.
- I) “EPS” (Electric Power System) - facilities that deliver electric power to a load. Note: This may include generation units.
- J) “Governmental Entity” - any federal, state or local government, board, department, agency, special district, instrumentality, or other similar entity entitled to rely on the rights, immunities or protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., 2-2018 Page 3 of 13 as the same may be amended from time to time.
- K) “Generation” - any device producing electrical energy, i.e., rotating generators driven by wind, steam turbines, internal combustion engines, hydraulic turbines, solar, fuel cells, etc.;



or any other electric producing device, including energy storage technologies.

- L) “Host” – the person or entity that is a retail electric service customer of Public Service and that owns or leases the Premises.
- M) “Local EPS” - an electric power system (EPS) contained entirely within a single premise or group of premises.
- N) “Nameplate Capacity” - the total AC nameplate capacity rating of all the Generation and Energy Storage Systems included in the DER. For this definition, the “standby” and/or maximum rated kW capacity on the nameplate shall be used.
- O) “Point of Common Coupling” - the point where the Local EPS is connected to Public Service, as shown on Exhibit A hereto.
- P) “Point of Delivery” - the point where the energy changes possession from one party to the other. Typically, this will be where the metering is installed but it is not required that the Point of Delivery is the same as where the energy is metered.
- Q) “Premises” – means the premises on which the DER is located and interconnected, as set forth in Section I.A.
- R) “Public Service Operator” - the distribution dispatch personnel or group that operates the Public Service Area EPS.
- S) “Technical Requirements” - standards and requirements set forth in the document entitled “Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation” (August 6, 2020), as may be modified from time to time.

### **III. DESCRIPTION OF INTERCONNECTION CUSTOMER’S DER**

- A) A description of the DER, including a single-line diagram showing the general arrangement of how the Customer’s DER is interconnected with Public Service’s electric distribution system, is attached to and made part of this Agreement as Exhibit A. The single-line diagram, if applicable, shall show the following:
  - 1) Point of Delivery
  - 2) Point of Common Coupling
  - 3) Location of Meter(s)
  - 4) Ownership of the equipment
  - 5) DER total Nameplate Capacity



- 6) Scheduled operational (on-line) date for the DER

#### **IV. RESPONSIBILITIES OF THE PARTIES**

- A) The Parties shall perform all of their respective obligations under this Agreement in accordance with all applicable laws and regulations, operating requirements, and good utility practices.
- B) Customer shall construct, operate, and maintain (or cause to be constructed, operated and maintained) the DER in accordance with the applicable manufacturer's recommended maintenance schedule, the Technical Requirements, and in accordance with this Agreement.
- C) Public Service shall carry out the construction of the Dedicated Facilities in a good and workmanlike manner, in accordance with standard design and engineering practices. [In connection with the performance of any work on Customer's behalf under this Agreement, Public Service will not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Public Service shall insert the foregoing provision in all subcontracts for such work hereunder.]
- D) If this Agreement is executed before Public Service has conducted its inspection and testing of the DER in accordance with the Technical Requirements, and such inspection and testing indicates that certain Dedicated Facilities (Exhibit B) or additional Operating Requirements (Exhibit D) are required, then the Parties shall promptly modify Exhibit B or Exhibit D accordingly.
- E) Whether or not Customer is the Host, Customer represents as of the date hereof, and warrants and covenants throughout the term of this Agreement, that the Host is and shall be at all times a retail electric service customer of Public Service and the Premises are and shall be at all times owned or leased by the Host.
- F) If Customer is not the Host, the following provisions apply. Customer represents as of the date hereof, and warrants and covenants throughout the term of this Agreement, that (i) it is and shall be at all times duly authorized by the Host to own and/or operate (as applicable) the DER at the Premises and to perform any and all obligations of Customer and acts permitted to be performed by Customer under this Agreement; (ii) the DER is and shall be at all times operated for the benefit of the Host; and (iii) it shall notify Public Service immediately if at any point during the term of this Agreement any of the foregoing is not true and correct in all respects. Customer shall obtain a Host Acknowledgement in substantially the form attached hereto as Exhibit E prior to the execution of this Agreement. If Customer fails to obtain a Host Acknowledgement prior to the execution of this Agreement, or if at any time during the term of this Agreement, such Host



Acknowledgement is not true and correct in all respects or the foregoing warranties are not true and correct in all respects, Public Service may terminate this Agreement immediately upon notice to Customer. If at any point during the term of this Agreement, the Host transfers ownership or assigns its lease of the Premises to a new Host, Customer shall cause the new Host to execute and deliver a Host Acknowledgement in substantially the form attached hereto as Exhibit E within 30 days of such transfer. If the new Host fails to timely execute and deliver such a Host Acknowledgement to Public Service, Public Service may terminate this Agreement immediately upon notice to Customer.

## V. CONSTRUCTION

A) The Parties agree to cause their facilities or systems to be constructed in accordance with the laws of the State of Colorado and to meet or exceed applicable codes and standards provided by the NESC (National Electrical Safety Code), ANSI (American National Standards Institute), IEEE (Institute of Electrical and Electronic Engineers), NEC (National Electrical Code), UL (Underwriter's Laboratory), Technical Requirements, applicable local building codes, and other applicable ordinances in effect at the time of the installation of the DER. Any obligations of Customer in respect of the construction standards and building requirements pursuant to this Agreement are not intended to and shall not waive any immunity or limitation of Customer's liability, shall not operate as a waiver of any defense Customer may have, and shall not under any circumstances act as an indemnification by Customer.

### B) Charges and Payments

The Customer is responsible for the actual costs to interconnect the DER with the Public Service electric distribution system at the Point of Common Coupling, including, but not limited to any Dedicated Facilities attributable to the addition of the DER, Public Service labor for installation coordination, commissioning, installation testing and engineering review of the DER, and interconnection design that are consistent with the applicable rules of the Commission. Estimates of these costs to be incurred by Public Service are set forth in Exhibit B. The estimated costs set forth in Exhibit B have been developed for budgeting purposes and may be greater or less than the actual costs required to be reimbursed by the Customer hereunder. All costs for which the Customer is responsible shall be reasonable under the circumstances of the particular design and construction of the interconnection.

#### 1) Dedicated Facilities

- a) During the term of this Agreement, Public Service shall design, construct, and install the Dedicated Facilities outlined in Exhibit B.
- b) Once installed, the Dedicated Facilities shall be owned and operated by Public Service and all costs associated with operating and maintaining the Dedicated Facilities shall be the responsibility of Public Service, unless otherwise agreed.
- c) Upon execution of this Agreement, Public Service shall be authorized to begin construction and to procure the necessary facilities and equipment to complete the



installation of the Dedicated Facilities, as described in Exhibit B. Notwithstanding any other provision of this Agreement to the contrary, if for any reason, the DER project is canceled or modified, or this Agreement is terminated by the Customer or by reason of the Customer's failure to diligently pursue the interconnection, such that any or all of the Dedicated Facilities are not required, the Customer shall nevertheless reimburse Public Service for actual costs incurred by Public Service in pursuing the installation of the Dedicated Facilities, including, but not limited to, any additional costs to remove and/or to complete the installation of the Dedicated Facilities. The Customer may (and if the Customer is not the Host, the Customer and the Host may jointly), for any reason, cancel the DER project, so that any or all of the Dedicated Facilities are not required to be installed, by providing written notice (or joint written notice if the Customer is not the Host) to Public Service of cancellation. Upon receipt of a cancellation notice, Public Service shall take reasonable steps to minimize additional costs to the Customer, where reasonably possible. This provision shall survive the termination of this Agreement.

- 2) Payments. The Customer shall pay Public Service for the cost of the Dedicated Facilities as follows.
  - a) All of the estimated costs, as set forth in Exhibit B, shall be due prior to initial energization of the DER with Public Service.
  - b) The remainder of actual costs, incurred by Public Service, excluding the ongoing costs of telemetry, shall be due within thirty (30) days from the date the bill is mailed by Public Service after project completion. If the Customer 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. In the event the actual costs are less than the estimated costs paid by Customer, Public Service shall refund the difference to the Customer within sixty (60) days of project completion.

## **VI. DOCUMENTS INCLUDED WITH THIS AGREEMENT.**

- A) This Agreement includes the following Exhibits, which are specifically incorporated herein and made part of this Agreement by this reference:
  - 1) Exhibit A – Description of DER and single-line diagram. This diagram shows all major equipment, including, visual isolation equipment, Point of Common Coupling, Point of Delivery for DERs that intentionally export, ownership of equipment, and the location of metering.
  - 2) Exhibit B – Estimated engineering, installation, equipment removal, commissioning and testing costs payable by the Customer. Included in this listing shall be the description and estimated costs for the required Dedicated Facilities being installed by Public Service for the interconnection of the DER and a description and estimate for the final acceptance testing work to be done by Public Service.



- 3) Exhibit C – Engineering Data Submittal A standard form application, and related charts, drawings and inventory lists that provide the engineering and operating information about the DER relied on by Public Service in establishing the interconnection.
- 4) Exhibit D – Operating Requirements. To be included when needed. The Operating Requirements detail special or additional operation information, limitations or requirements that are a condition of interconnection and/or continued ongoing operation.
- 5) Exhibit E – Form of Host Acknowledgement. To be used when the Customer is not the Host.

## **VII. TERMS AND TERMINATION**

- A) This Agreement shall become effective as of the date when both the Customer and Public Service have executed this Agreement. The Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:
  - 1) The Parties agree in writing to terminate the Agreement;
  - 2) The Customer may terminate this Agreement at any time, immediately upon written notice (or joint written notice by Customer and Host if Customer is not the Host) to Public Service, prior to witnessing the completion of the final acceptance testing of the DER by Public Service. Upon such termination, the Customer shall continue to be responsible for costs incurred by Public Service as provided for in Section V.B. above. Upon receipt of a termination notice, Public Service shall take reasonable steps to minimize additional costs to the Customer, where reasonably possible;
  - 3) Once the DER is operational, the Customer may terminate this Agreement after thirty (30) days' joint-written notice by Customer and Host (if Customer is not the Host) to Public Service;
  - 4) Public Service may terminate this Agreement after thirty (30) days written notice to the Customer if:
    - a) The Customer fails to interconnect and operate the DER in accordance with the terms of this Agreement;
    - b) The Customer fails to take all corrective actions specified in Public Service's written notice that the DER is out of compliance with the terms of this Agreement, within the time frame set forth in such notice; or
    - c) The Customer fails to complete Public Service's final acceptance testing of the DER within 24 months of the date proposed under section III.A.6.



- 5) This Agreement shall automatically terminate upon the removal of the DER or the permanent cessation of generation operations by Customer behind the Point of Common Coupling.
- B) Upon termination of this Agreement, the DER shall be disconnected from Public Service's electric distribution system. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing, at the time of the termination.

## VIII. OPERATIONAL ISSUES

Each Party will, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for, the facilities that it now or hereafter may own, unless otherwise specified.

- A) Technical Standards: The DER shall be installed and operated by the Customer consistent with the requirements of this Agreement; the Technical Requirements; the applicable requirements located in the National Electrical Code (NEC); the applicable standards published by the American National Standards Institute (ANSI) and the Institute of Electrical and Electronic Engineers (IEEE); applicable local building codes, and other applicable ordinances in effect during the installation and operation of the DER and related facilities.
- B) Right of Access: At all times, Public Service's personnel shall have access to the disconnect switch of the DER for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement, to meet its obligation to operate Public Service's system safely, and to provide service to its customers. As necessary for Public Service to operate, maintain, inspect, test, repair or replace its facilities for the purposes of this Agreement, the Customer shall allow Public Service access to Public Service's equipment and facilities located on the Premises. Public Service shall make commercially reasonable efforts to comply with any reasonable safety or security requirements of Customer with respect to the Premises provided to Public Service in advance in writing to the extent that such requirements do not interfere with the foregoing purposes.
- C) Electric Service: This Agreement does not govern the provision of electric service by Public Service to supply the electrical requirements of the Local EPS. Any such electric service to be supplied to the Customer's Local EPS by Public Service shall be exclusively in accordance with the franchise agreement (if any) and Electric Tariffs and rate schedules applicable to the Customer's class of service thereunder, as in effect from time to time.
- D) Operation and Maintenance: The DER shall be operated by the Customer in accordance with the Technical Standards and any additional requirements that may be agreed to in writing from time to time.
- E) Cooperation and Coordination: Both Public Service and the Customer shall communicate and coordinate their operations, so that the normal operation of Public Service's system does not unduly effect or interfere with the normal operation of the DER and the DER does



not unduly effect or interfere with the normal operation of Public Service's system. Under abnormal operations of either the DER or the Public Service system, the responsible Party shall provide reasonably timely communication to the other Party to allow mitigation of any potentially negative effects of the abnormal operation of their system.

- F) Disconnection of Unit: Public Service may disconnect the DER as reasonably necessary in the event of termination of this Agreement, non-compliance by the Customer with the terms of this Agreement, system emergency, imminent danger to the public or Public Service personnel, and routine maintenance, repairs, and modifications to the Public Service system. When reasonably possible, Public Service shall provide prior notice to the Customer explaining the reason for the disconnection. If prior notice is not reasonably possible, Public Service shall, after the fact, provide information to the Customer as to why the disconnection was required. Public Service shall have no liability for any loss of sales or other damages, including any consequential damages for the loss of business opportunity, profits, or other losses, regardless of whether such damages were foreseeable, for the disconnection of the DER in accordance with this Agreement. Public Service shall use reasonable efforts to reconnect the DER in a timely manner and to work towards mitigating damages and losses to the Customer where reasonably possible.
- G) Modifications to the DER – The Customer shall notify the Public Service Operator, in writing, of plans for any modifications to the DER interconnection equipment, including all information needed by Public Service, as part of the review described in this paragraph, at least twenty (20) business days prior to undertaking such modification(s). Modifications to any of the interconnection equipment, including all interconnection required protective systems, the generation control systems, the transfer switches/breakers, interconnection protection VT's & CT's, and DER capacity, shall be included in the notification to Public Service. The Customer agrees not to commence installation of any modifications to the DER until Public Service has approved the modification, in writing, which approval shall not be unreasonably withheld. Public Service shall have a minimum of five (5) business days to review and respond to the planned modification. Public Service shall not take longer than a maximum of ten (10) business days to review and respond to the modification after the receipt of the information required to review the modifications. A major upgrade or expansion of the DER does not qualify for this provision. Such changes shall be reviewed through a formal interconnection application.
- H) *Any modification to the DER that causes the system to operate contrary to the provisions of Public Service's tariffs and/or this Agreement shall be considered a material breach of this Agreement. For purposes of this Section modifications include but are not limited to: operating at a power factor other than specified; introduction in any manner of non-eligible energy resources to a net metered installation; connecting additional distributed energy resources without notification to Public Service; or, other operating modes disallowed under the tariffs pursuant to which operation has been authorized. In such event, Public Service shall notify the Customer of the system's non-compliance with Public Service's tariffs or this Agreement and the Customer shall have twenty (20) days from the date of such notice to either remedy the non-compliant operation or cease operation. If the Customer fails to either remedy the non-compliant operation or cease operation within*



*twenty (20) days of the date of the notice, Public Service may terminate this Agreement after ten (10) days written notice to the Customer.*

- I) Permits and Approvals: The Customer shall obtain all applicable environmental and other applicable permits from governmental authorities as required by law prior to the construction of the DER. The Customer shall maintain all such applicable permits, as necessary, and comply with these permits during the term of this Agreement.

## **IX. LIMITATION OF LIABILITY**

- A) Each Party shall at all times indemnify, defend, and save the other Party harmless from any and all damages, losses, claims, including claims and actions relating to injury or death of any person or damage to property, costs and expenses, reasonable attorneys' fees and court costs, arising out of or resulting from the Party's (including, but not limited to, such Party's officers, employees, and agents) acts, omissions, or performance of its obligations under this agreement, except to the extent that such damages, losses or claims were caused by the negligence or intentional acts of any other Party.

Notwithstanding the foregoing, if (and only if) Customer is a Governmental Entity, then solely as between Public Service and Customer, the foregoing provisions of this Section IX.A. shall be substituted in their entirety with the following. Nothing in this Section or any other provision of this Agreement or any addendum or amendment hereto shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Customer may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., et seq.) or to any other defenses, immunities, or limitations of liability available to the Customer by law.

- B) To the extent permitted by law, any liability of either Party to the other for failure to perform its obligations under this Agreement shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any punitive, incidental, indirect, special, or consequential damages of any kind whatsoever, including for loss of business opportunity or profits, regardless of whether such damages were foreseen.
- C) Notwithstanding any other provision in this Agreement, with respect to Public Service's provision of electric service to any customer including the Customer, Public Service's liability to such customer shall be limited as set forth in Public Service's tariffs and terms and conditions for electric service and shall not be modified or in any manner affected by the terms of this Agreement.

## **X. DISPUTE RESOLUTION**

- A) Each Party agrees to attempt to resolve all disputes arising hereunder promptly, equitably, and in a good faith manner.



- B) In the event a dispute arises under this Agreement, and if the Parties cannot resolve it within five (5) days after written notice of the dispute to the other Party, the Parties may mutually agree to submit the dispute to mediation by a mutually acceptable mediator or dispute resolution service, in a mutually convenient location in the State of Colorado. Each Party will be responsible for one-half of the cost paid to neutral third-parties.
- C) The Parties agree to participate in good faith in the agreed upon mediation or resolution process. If the Parties are not successful in resolving their dispute through mediation or the dispute resolution process, then the Parties may refer the dispute for resolution to the Commission or to a court of law in the State of Colorado, which shall maintain continuing jurisdiction over this Agreement.

## **XI. INSURANCE**

- A) At a minimum, in connection with the Customer's performance of its duties and obligations under this Agreement, the Customer shall maintain, during the term of the Agreement, general liability insurance, written by an insurer with an A.M. Best rating of at least A-VII or a Standard & Poor's rating of at least A, with a combined single limit of not less than:
  - 1) For a non-inverter-based DER:
    - a) Three million dollars (\$3,000,000) or greater for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 5 MW.
    - b) Two million dollars (\$2,000,000) or greater for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 2 MW up to and including 5 MW.
    - c) One million dollars (\$1,000,000) for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 500 kW up to and including 2 MW.
    - d) Five hundred thousand dollars (\$500,000) for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 50 kW up to and including 500 kW.
    - e) No additional insurance is required for each occurrence if the Gross AC Nameplate Rating of the DER is 50 kW or less.
  - 2) For an inverter-based DER:
    - a) Two million dollars (\$2,000,000) or greater for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 5 MW.
    - b) One million dollars (\$1,000,000) or greater for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 1 MW up to and including 5 MW.
    - c) No additional insurance is required for each occurrence if the Gross AC Nameplate Rating of the DER is 1 MW or less.



- 3) General liability insurance required under this Section XI.A shall include coverage against claims for damages resulting from (i) bodily injury, including wrongful death; and (ii) property damage arising out of the Customer's ownership and/or operating of the DER under this Agreement. Customer shall not be required to maintain insurance to cover damages other than Public Service damages.
- B) The general liability insurance required by Section XI.A shall, by endorsement to the policy or policies: (a) include Public Service as an additional insured; (b) provide that Public Service shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of premium for such insurance; and (c) provide for thirty (30) calendar days' written notice to Public Service prior to cancellation, termination, alteration, or material change of such insurance.
- C) Evidence of the insurance required in Section XI.A shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by Public Service.
- D) If the Customer is a Governmental Entity and self-insures against liability in amounts above those required in Section XI.A for a DER up to 2 MW or to the replacement value of the DER for a DER above 2 MW, Customer shall not be required to purchase additional insurance or to add Public Service as an additional insured to any policy, nor shall Customer be obligated to indemnify Public Service, though the Customer shall be liable for any of its negligent or intentional acts or omissions, or its employees, contractors, subcontractors, or agents. If Customer self-insures under this Section XI.D, it must comply with the following in lieu of Section XI.A – C:
  - 1) Customer shall provide to Public Service, at least thirty (30) days prior to the date of initial operation, evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required under section XI.A.
  - 2) If Customer ceases to self-insure to the level required hereunder, or if the Customer is unable to provide continuing evidence of its ability to self-insure, the Customer agrees to immediately obtain the coverage required under Section XI.A.
- E) The Customer shall provide Public Service a certificate of insurance evidencing the requisite coverage and provisions prior to the interconnection of the DER. After interconnection, Public Service may periodically request proof of current insurance coverage in order to verify compliance with the requirements of this Section XI. Upon receipt of any such request, the Customer shall provide a certificate of insurance evidencing the requisite coverage and provisions. Failure of the Customer to provide timely evidence of proper insurance may result in disconnection of the DER pursuant to Section VIII.F.
- F) Failure of the Customer or Public Service to enforce the minimum levels of insurance does not relieve the Customer from maintaining such levels of insurance or relieve the Customer of any liability.



- G) All insurance certificates, statements of self-insurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

*Public Service, Manager Area Engineering, 1123 W. 3<sup>rd</sup> Avenue, Denver, CO 80223*

## **XII. MISCELLANEOUS**

### **A) FORCE MAJEURE**

- 1) An event of Force Majeure means any act of God, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause, in each case, to the extent beyond a Party's reasonable control. An event of Force Majeure does not include an act of negligence or intentional wrongdoing.
- 2) Neither Party will be considered in default of any obligation hereunder if such Party is prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Agreement is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations hereunder.

### **B) NOTICES**

- 1) Any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person or sent by first class mail, postage prepaid, to the person specified below:

- a) If to Public Service:

Public Service, Manager Area Engineering, 1123 W. 3<sup>rd</sup> Avenue, Denver,  
CO 80223

- b) If to Customer:

□  
□

- 2) A Party may change its address for notices at any time by providing the other Party written notice of the change, in accordance with this Section.
- 3) The Parties may also designate operating representatives to conduct the daily communications that may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone numbers may be communicated or revised by one Party's notice to the other Party.



#### **C) ASSIGNMENT**

All of the terms, covenants, representations, warranties, and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the Parties hereto and their respective successors, but neither this Agreement nor the rights and obligations of the Customer may be assigned except as provided for in this Section XII.C. In the event the Customer sells, conveys or otherwise transfers ownership or operational control of the DER to another entity ("New Customer"), this Agreement may be transferred to such New Customer upon receipt by Public Service of a written document, in a form satisfactory to Public Service, indicating the New Customer's agreement to comply with all of the terms of this Agreement (and if the Customer is not the Host, such assignment may be effected only with the consent of Host, but may be effected without any consent of the transferor Customer). The Customer shall not otherwise assign its rights nor delegate its duties under this Agreement without Public Service's written consent, which shall not be unreasonably withheld. Any assignment or delegation the Customer makes without Public Service's written consent shall not be valid.

#### **D) NON-WAIVER**

None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

#### **E) GOVERNING LAW AND INCLUSION OF PUBLIC SERVICE'S TARIFFS AND RULES.**

- 1) This Agreement shall be interpreted, governed, and construed under the laws of the State of Colorado as if executed and to be performed wholly within the State of Colorado without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.
- 2) The provisions of this Agreement shall at all times be subject to the applicable terms and conditions set forth in the Electric Tariffs pertaining to the electric service provided by Public Service, which are hereby incorporated into this Agreement by this reference.
- 3) Notwithstanding any other provisions of this Agreement, Public Service shall have the right to unilaterally file with the Commission, pursuant to the Commission's rules and regulations, an application for change in rates, charges, classification, service, tariff, or rule or any agreement relating thereto.

#### **F) AMENDMENT AND MODIFICATION**



This Agreement will not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto.

#### **G) ENTIRE AGREEMENT**

This Agreement, including all attachments, exhibits, and appendices, constitutes the entire Agreement between the Parties with regard to the interconnection of the DER of the Parties at the Point(s) of Common Coupling expressly provided for in this Agreement and supersedes all prior agreements or understandings, whether verbal or written. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on the promise, inducement, representation, warranty, agreement, or other statement not set forth in this Agreement or in the incorporated attachments, exhibits, and appendices. If Customer is a Governmental Entity and Public Service has entered into a franchise agreement or similar agreement with Customer, then, in the event of any conflict between this Agreement and such franchise agreement, such franchise agreement shall control; provided, that this Agreement shall control with respect to any technical or operational provisions specific to the DER and its interconnection to Public Service's electric distribution grid.

This Agreement may be executed in two or more counterparts, each of which is deemed original, but all constitute one and the same instrument. The Parties agree that a facsimile copy of a signature will be deemed original and binding.

#### **H) CONFIDENTIAL INFORMATION**

- (1) Confidential information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." All design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.
- (2) Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce an agreement between the Parties. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under agreements between the Parties, or to fulfill legal or regulatory requirements.



- A. Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
  - B. Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
- (3) Notwithstanding anything in this article to the contrary, if the Commission, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence, the Party shall provide the requested information to the Commission, within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public by the Commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to the Commission. The Party shall notify the other Party when it is notified by the Commission that a request to release Confidential Information has been received by the Commission, at which time either of the Parties may respond before such information would be made public.

#### **H) NO WARRANTIES**

By undertaking the performance of any of its responsibilities under the terms of this Agreement, including, without limitation, any inspection, acceptance or non-rejection, Public Service does not give and hereby disclaims any warranty, expressed or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances, or devices owned, installed, or maintained by the Customer or leased by the Customer from third parties, including without limitation the DER and any structures, equipment, wires, appliances, or devices appurtenant thereto.

#### **I) NO PARTNERSHIP**

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### **J) ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**

Public Service consents to the use of electronic signatures by Customer. The Agreement and any other documents requiring signature hereunder may be signed electronically by Customer in the manner specified by Customer. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because



an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

#### **K) APPROPRIATIONS**

This Section XII.K. applies only if Customer is a Governmental Entity. The Parties acknowledge that the Customer is subject to Article X, § 20 of the Colorado Constitution. If the Customer fails to appropriate funds for any given fiscal year sufficient to perform its obligations under this Agreement, (a) the Customer will be in material breach of this Agreement and (b) either Customer or Public Service may terminate this Agreement upon ten (10) days prior written notice to all other Parties. No finding that this Agreement violates Article X, § 20(4)(b) of the Colorado Constitution will void, make voidable, or nullify this Agreement.

(Signature Page Follows)



IN WITNESS WHEREOF, the Parties hereto have caused three originals of this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.

**Customer:**

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

Name: \_\_\_\_\_

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

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

**Public Service Company of Colorado**

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

Name: \_\_\_\_\_

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

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



## **EXHIBIT A**

### **DER DESCRIPTION AND SINGLE-LINE DIAGRAM**

(1) One Line Diagram

**\*\* Submitted with online Solar application**

For all other applications, attach the submitted one-line diagram to this Exhibit.



## **EXHIBIT B**

### **SUMMARY OF PUBLIC SERVICE COSTS AND DESCRIPTION OF DEDICATED FACILITIES BEING INSTALLED BY PUBLIC SERVICE FOR THE INTERCONNECTION OF THE DER**

Except as otherwise may be provided in separate agreements, there are no interconnection costs associated with the installation of a solar photovoltaic system with a nameplate capacity of 500 kW and less.

## **EXHIBIT C**

### **ENGINEERING DATA SUBMITTAL FOR THE INTERCONNECTION OF THE CUSTOMER'S DER**

(1) Small Generator Interconnection Application

\*\* Submitted with online Solar application (only applicable for systems over 10 kW)

For all other applications, the completed application form shall be attached to this Exhibit.

## EXHIBIT D

### OPERATING REQUIREMENTS

This Exhibit may be deleted if specific operation requirements have not been identified and included on this Exhibit.

The following operating procedures, facility configuration, or conditions of operation are to be complied with as a requirement of interconnection and continued operation:

**The Generation Facility shall operate at a specified fixed Power Factor:**

The specified Power Factor as a condition of interconnection:  
[ ]%; Absorbing Volt-Amperes Reactive “VARs”; Producing VARs]

This Power Factor is specified at the: [Point of Common Coupling; Generator]

The power factor may be changed from time to time by mutual agreement. A temporary power factor may be specified by Public Service Company of Colorado d/b/a Xcel Energy as a condition of operation in lieu of disconnecting when the distribution system is in a contingency configuration.

The system owner is responsible to operate and maintain all equipment per manufacturer specifications and guidelines.

**Start-Up, Shut-Down, and Ramp Rates (Applicable for systems above 100kW with more than 1 inverter):**

- In order to mitigate voltage variations, where the DER consists of more than one unit (e.g., inverters in a solar Photovoltaics “PV” context), with aggregate rating of 100kW AC or above; Customer shall stagger the planned start-up and shutdown of the units in 50%+/- increments if only two inverters, 33% +/- increments if three inverters and 25% +/- increments if four or more inverters, with a minimum delay of 30 seconds between the starting and controlled stopping of each unit. A controlled planned shutdown may be a condition of interconnection. The sequence of operation, including estimated timeframes for actions, must be submitted to and approved by Public Service in advance.
- In order to mitigate voltage variations and surges, Public Service reserves the right, based upon an engineering study, to have Customer modify Start-up, Shut Down, and Ramp Rate requirements, within the equipment’s capability. Customer shall comply with the request for modification in a timely fashion in accordance with good utility practices.
- Specific to Customer’s Installation: [ ]



### **Applicable If Energy Storage Systems Are Involved:**

Three Energy Storage Guidance Documents (“Guidance Documents”) address battery configurations and requirements related to the terms of Colorado Public Utilities Commission Proceeding No. 16AL-0048E. Energy storage interconnections are allowed as addressed in these Guidance Documents. The interconnection principles illustrated also apply to large interconnections, as permitted in the filed tariffs. In the event of a conflict between these Operating Requirements and Guidance Documents, the Guidance Documents shall rule. Energy storage system interconnections not included in this PUC Proceeding must be documented and be in accordance with an engineering study and applicable tariffs.

Nothing under the Guidance Documents shall be construed to limit the export of actual onsite renewable self-generation that is net metered in compliance with the approved tariffs.

### **Exclusions**

Certain tariff and generation interconnection types are outside the provisions of PUC Proceeding No. 16AL-0048E and are not covered in the Guidance Documents. Each Guidance Document lists the relevant interconnection types excluded. Energy storage system interconnections not included in this proceeding must be documented and be in accordance with the Engineering Study and applicable tariffs.

### **Additional Definitions**

“Configuration” - the physical electrical design of the Distributed Energy Resource (“DER”). The Guidance Documents provide diagrams showing representative typical connection designs for a small PV as examples. The Configuration is a combination of the illustrated connection and the diagram notes concerning the equivalent connections inside of a software-governed inverter.

“Distributed Energy Resource (DER)” - the Customer’s source of electric power connected to Public Service’s electric distribution system pursuant to this Agreement, including retail renewable distributed generation (as defined in the Commission’s rules for electric generation), other small generation facilities for the production of electricity, Energy Storage Systems, or combination of any of these elements, but shall not include the interconnection facilities not owned by the interconnection customer. “DER” includes an interconnection system or a supplemental distributed energy resource device that is necessary for compliance with IEEE Standard 1547-2018, until January 1, 2022 or such time new distributed energy resource devices applying for interconnection will comply with IEEE 1547-2018 (but not including any later amendments or editions of such standard). “DER” also includes any controls, relays, switches, breakers, transformers, inverters, and associated wiring and cables, up to the Point of Common Coupling.



“Energy Storage Guidance Documents” or “Guidance Documents” - Guidance documents for the interconnection of electric storage based on agreed to terms from Proceeding No. 16AL-0048E and as published on Public Service’s website.

“Inadvertent Export” - the unscheduled and uncompensated export of real power generated from a customer’s parallel operation and delivered to Public Service. The use of an internal transfer relay, energy management system, or other customer facility hardware or software system(s) intended to prevent the reverse power flow, or net export, from the customer’s energy source across the point of interconnection shall be required. The magnitude of energy export shall be less than the aggregate nameplate rating (kW-gross) of all sources ineligible to export power (“Non-Export”) multiplied by one hour per month, and the duration of export of power from the customer’s parallel operation shall be less than 30 seconds for any single event.

“Interconnected DER Capacity” - the aggregate nameplate ratings of the DER that can be simultaneously supplied to the grid, such as storage and self-generation. If the contribution of the energy storage to the total contribution is limited by programming or by some other onsite limiting element, the reduced ongoing capacity will be used.

“Material Change” - any modification to the system that causes the system to operate contrary to the approved operating configuration shall be considered a material change and shall be considered a material breach of this Agreement.

“Non-Export” - a restriction whereby no Parallel Operation of Self-Generation or Energy Storage energy may export from the utility service meter to the utility is allowed and for which no payment will be given. Non-Export also applies to specific sources not allowed to export, such as batteries. Export of non-renewable sourced energy is not allowed. Non-Export restrictions are subject to the “Inadvertent Export” definition.

“Operating Mode” - a combination of the functionality in the physical Configuration and the functionality in the software programming some of which is not shown in the Configuration diagram. Operating Mode is the combined function designed to achieve an Operating Objective that may vary with a change of settings. Operating Modes are established as a function, not by a diagram designation. Operating Modes include, but are not limited to, battery non-export, maximize self-consumption, maximize export, perform time shifting, and perform peak shaving. A change of Operating Mode may constitute a change of Operating Objective.

“Operating Objective” - the functional purpose of the DER operation achieved by the combination of the approved Configuration and Operating Mode. Any alterations to an Operating Mode may result in unacceptable changes to the Operating Objective as originally approved. Such changes may render the facility ineligible for use without additional mitigations.

“Parallel Operation of Energy Storage” - a source operated in parallel with the grid when it can supply energy to the customer simultaneously with Public Service’s supply of energy.

“Self-Generation” - a customer supplying all or part of their entire load from onsite generation with no intent of exporting that self-generated power or receiving payment for export.

### **Energy Storage Requirements and Additional Information**

1. The energy storage design follows Guidance Document and Configuration and follows all provisions of associated requirements. [Enter Energy Storage Guidance Document and Configuration}]
2. Per the Guidance Documents, interconnection study, and interconnection tariff, the Operating Modes allowed for the energy storage shall be limited to applicable Operating Modes allowed under the Energy Storage Guidance and Tariff.
3. Any change in Configuration or Operating Mode from the Configuration or Operating Mode specified in the application that impacts the ability of the energy storage system to adhere to the applicable and approved Configuration and Guidance Document requirements may be considered a material change and may require partial or full review of the facility, which may require additional system mitigations.
4. Excluded modes are any Operating Modes not included and approved as part of the interconnection review. Configurations and Operating Modes Excluded: [Enter Excluded Configurations and Operating Modes]
5. Inverter software programming or other programming required to meet the energy storage guidance requirements shall be inaccessible and/or password protected with access restricted to manufacturer/developer/installer. This may include locks or other physical security or other means of securing the settings; or as mutually agreed upon on a case-by-case basis and identified in this Energy Storage System section of Exhibit D.
6. Any energy storage system that cannot be secured in a single Operating Mode must be reviewed for compliance with the guidelines for all Configurations or Operating Modes that are user selectable. The application must have all unapproved Operating Modes documented under Excluded Modes in paragraph 4 above and the applicable Guidance Document. Any use of excluded or unapproved Configurations or Operating Modes may be grounds for disconnection and termination of the Agreement subject to cure provision in IA Section VIII.H to which this Exhibit is attached.
7. Customer accepts that for energy storage systems interconnected per Guidance Document No. 3, Configurations will result in some loss of Production Meter recorded Renewable Energy Credits “RECs” and corresponding payments for installations eligible for REC payments. This is due to battery energy storage

systems' consuming some power for maintaining a charge along with the discharge-charge cycle resulting in turn-around losses.

8. For energy storage systems interconnected per Guidance Document No. 3, Configuration 3A, with a protected load panel, a meter socket shall be installed between the hybrid inverter and protected load panel for the installation of a uni-directional Load meter by utility.
9. Telemetry requirements are determined based on the Interconnected DER Capacity with requirement thresholds outlined in the Technical Requirements. Telemetry required: [Y\_ N\_]
10. Public Service reserves the right to conduct a facility inspection to verify compliance at a later date if problems arise or indications of possible non-compliance are present.
11. Specific to Customer's Installation [blank unless storage only requirements apply]

**Applicable for Systems that Require Ground Referencing Transformer Provisions:**

The ground referencing transformer shall be operated and maintained such that:

- The grounding referencing transformer must be in service whenever the inverters or other sources are on-line and capable of producing power while connected to the utility.
- At any time the grounding transformer is unavailable, the inverters or other sources must not be allowed to start or restart a connection to the utility.
- Specific to Customer's Installation: \_\_\_\_\_

**Applicable to Systems Over 100 kW AC when Disconnection Due to System Constraints or Safety may be Required:**

Disconnection or curtailment requirements of the generating system when required pursuant to Section VIII.F) of the Distributed Energy Resource Interconnection Agreement to which this Exhibit is attached:

Public Service may disconnect the DER as reasonably necessary in the event of imminent danger to the public or Public Service personnel, and routine maintenance, repairs, and modifications to the Public Service system. See Section VIII.F) for notification by Public Service provisions.

The Customer shall ensure that at all times Public Service has access to a manually operated three-phase lockable disconnect switch.

Customer agrees and consents to Public Service's remote tripping or manual disconnection, as reasonably necessary under good utility practice, of the utility owned disconnecting device or other agreed to facility device for the DER including, but not limited to, in the following circumstances, when system conditions exceed parameters defined in any IEEE, NESC, ANSI standards, prudent safety practices, system capacity limits, or utility system contractual limits:

- Electric Distribution or Transmission System emergency
- Public emergency
- Abnormal system operation
- Planned switching
- Transmission system constraints

The above may have situations where a partial reduction in Facility output may adequately alleviate the problem. If partial curtailment is an option for one or more of the above conditions, the applicant will need to demonstrate how this can be accomplished. Interconnection Customer's failure to promptly respond to and execute on Public Service's request to curtail the output of the DER, it will be disconnected either manually or remotely by Public Service. If Public Service remotely trips the disconnecting device for the DER, Public Service will close the device remotely, if so equipped, after attempting to notify Customer. Public Service will close their device remotely once the reason for the remote tripping has passed and it is safe and consistent with good utility practice to do so. If the disconnection was done manually, Public Service will close the device in a timely manner.

The DER is subject to curtailment or disconnection for the following defined limitation in addition to the above conditions: (N/A if none)

Describe: \_\_\_\_\_  
\_\_\_\_\_

Remotely operated separation device, if other than utility owned, agreed to by the Customer: (N/A if none)

Describe: \_\_\_\_\_  
\_\_\_\_\_

**Control Center Contacts:**

Each Party shall contact each other's control center contact for all operational issues related to the DER, pursuant to Section XII.B. In order to permit Public Service and Customer to take immediate action, the Customer and Public Service shall at all times provide to each other the contact information of each other's control center contact, which shall be available twenty-four (24) hours a day, seven (7) days a week and be able to take action with respect to the operation of the DER, respectively. Each Party shall keep the other informed of their control center contact information. Notice of changes to the control center contact information shall be provided when such changes occur.



**Installer:**

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

Name: \_\_\_\_\_

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

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

**EXHIBIT E**  
**FORM OF HOST ACKNOWLEDGEMENT**

[To be inserted]



## Renewable\*Connect<sup>SM</sup> 2.0 Subscriber Agreement

This Renewable\*Connect<sup>SM</sup> 2.0 Subscriber Agreement (the “Agreement”) is entered into on XX/XX/20XX (the “Agreement Date”) by and between Public Service Company of Colorado, a Colorado corporation (“Public Service” or “Company”) and \_\_\_\_\_ (“Customer”) (individually “Party” and together, “Parties”). The “Effective Date” of Agreement will begin either the date the Renewable\*Connect program begins producing solar energy or the Agreement Date, whichever occurs first. 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 (the “Rules”), as of the date of this Agreement.

1. **General Terms.** Public Service agrees to sell and the Customer agrees to buy solar energy through the Company’s Renewable\*Connect program, subject to this Agreement and the terms and conditions of service as specified in the Public Service’s Electric Tariff, including the Renewable\*Connect Service Tariff (“RC Tariff”) (Rate Schedule RC) on file with the Public Utilities Commission of the state of Colorado (“Colorado PUC”) as the same may be revised from time to time. A copy of the Electric Tariff, including Rate Schedule RC, is available from the Public Service’s website at [https://www.xcelenergy.com/staticfiles/xcel-responsive/Archive/PSCo\\_Electric\\_Entire\\_Tariff.pdf](https://www.xcelenergy.com/staticfiles/xcel-responsive/Archive/PSCo_Electric_Entire_Tariff.pdf). In the event of any conflict between the terms of this Agreement and the Electric Tariff, the provisions of the Electric Tariff shall control.

2. **Subscription Address.**

a. The Customer’s address (the “Subscription Address”) means the following:

| Address | City | State | Customer ID | Premise ID |
|---------|------|-------|-------------|------------|
|         |      |       |             |            |

b. During the Term Customer may transfer its subscription associated with the Subscription Address to a different subscription address within Public Service’s certificated service territory, (“New Address”) without penalty and, the original Term will continue to apply to the transferred subscription, and Customer’s participation in the Renewable\*Connect program will automatically be transferred to the New Address. Public Service will reexamine the Customer’s use at the New Address 12 months after Customer’s transfer to the New Address. If the Customer’s first 12 months of energy usage is lower at the New Address than the energy usage at the Subscription Address, Public Service will provide notice to the Customer and will readjust the Customer’s Subscription Share so that the solar energy produced will be no greater than the Customer’s last 12 months energy usage at the New Address, and the Customer will pay a pro-rata portion of the Early Termination Fee, calculated using the percentage decrease in the Subscription Share multiplied by the full Early Termination Fee calculated as of the date of notice to the Customer of the decreased energy usage at the New Address. If the Customer’s first 12 months of energy usage is higher at the New Address than the energy usage at the Subscription Address, the Subscription Share that was established for the Term will remain in effect.

3. **Selection of Participation Share.** The Customer has chosen to participate in a \_\_\_\_ kW share of the solar system reserved for the program ("Subscription Share"). Each month Public Service will use the Customer's Subscription Share to calculate the amount of solar energy produced by the Customer's share of the system.
4. **Term.** The term of this Agreement shall be 15 years ("Term"). The Term shall be calculated from the Effective Date of this Agreement or, if the solar photovoltaic facility supporting Renewable\*Connect has not achieved commercial operation as of the Effective Date, the date on which it achieves commercial operation.
5. **Termination.**

- a. **Termination by Customer.** The Customer may terminate this Agreement at any time prior to the end of the Term upon notice to Public Service. If Customer terminates this Agreement under this subsection 5(a), Customer must pay to Public Service a fee (the "Early Termination Fee"). The Early Termination Fee shall be calculated as follows:

Early Termination Fee = ( [Renewable\*Connect Charge] – [Solar Avoided Capacity Credit] ) x [estimated kWh of Renewable\*Connect Photovoltaic Generation corresponding to Customer's Subscription Share for the remainder of the Term], discounted to net present value using the Company's then current weighted average cost of capital.

Upon termination by Customer under this subsection 5(a), Public Service will use diligent efforts to enter into an agreement with a replacement customer for Customer's Subscription Share ("Replacement Customer"). If Public Service enters an agreement with a Replacement Customer within 90 days of termination by Customer, Public Service will provide notice to Customer and Customer will not be required to pay the Early Termination Fee. If no agreement is reached with a Replacement Customer within 90 days of termination by Customer, customer will have 30 days to pay the Early Termination Fee to Public Service. Public Service will be under no obligation to return or refund the Early Termination Fee to Customer if Public Service enters into an agreement with a Replacement Customer more than 90 days after the date of termination by Customer. Notwithstanding the foregoing, if Customer terminates this Agreement and there is unsubscribed solar energy in the Renewable\*Connect program, Public Service may enter agreements with additional customers for the unsubscribed solar energy before entering an agreement with a Replacement Customer for Customer's Subscription Shares. Customer will not be required to pay the Early Termination Fee if Customer assigns this Agreement to another customer in accordance with section 13 of this Agreement.

- b. **Termination by Public Service.** Public Service shall have the unilateral right to terminate this Agreement at any time if the solar photovoltaic facility supporting Renewable\*Connect does not achieve commercial operation or does not perform pursuant to the Public Service contract with the owner or operator of the solar system reserved for the program ("RC Producer").
- c. **Termination for Default.** Any breach of a material term of this Agreement, or the failure of any representation or warranty to be true and correct during the Term, shall be considered an event of default hereunder, in which case the non-defaulting Party may terminate this Agreement; provided, that the non-defaulting Party shall first 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 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 can be cured but cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof, but in no event shall the defaulting party have longer than

60 days to cure such default. Notwithstanding the foregoing and without limiting Public Service's other rights hereunder, Public Service may terminate this Agreement immediately upon written notice to Customer if the Customer resides outside of the Public Service's certificated service territory and will be charged the Early Termination Fee calculated as of the date of such notice unless Public Service enters into an agreement with a Replacement Customer pursuant to subsection 5(a).

6. **Representations and Warranties.** Customer hereby makes the following representations and warranties to Public Service:
  - a. Customer warrants that the person signing this Agreement on behalf of Customer is individually authorized and competent to sign this Agreement and to bind Customer to the terms hereof.
  - b. Customer receives electric service from Public Service at the Subscription Address set forth above, and is the person in whose name electric service is listed at the Subscription Address.
7. **Suspension of Performance.** Notwithstanding any other provision of this Agreement to the contrary, Public Service may suspend performance of its obligations under this Agreement, in whole or in part, if at any time during the Term the solar photovoltaic facility supporting Renewable\*Connect is unavailable or underproducing, whether or not such unavailability or underproduction constitutes an event of Force Majeure.
8. **Force Majeure.**
  - a. "Force Majeure" means an event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance:
    - i. is not within the control of and is not the result of the fault or negligence of the Party claiming its occurrence, and
    - ii. which by exercise of due diligence and foresight could not reasonably have been avoided, including acts of God; sudden action of the elements such as floods, earthquakes, hurricanes, or tornados, lightning, fire, ice storms, smoke or other particulates from volcanoes; sabotage; vandalism beyond that which could reasonably be prevented; terrorism; war; riots; explosion; blockades; insurrection; except as set forth in subsection (e) below, labor strikes, slowdowns or labor disruptions (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule, Applicable Law 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, provided, however, that Force Majeure shall not include:
      - (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this Agreement;
      - (b) acts or omissions of a third party, unless such acts or omissions are themselves excused by reason of Force Majeure;
      - (c) mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment unless such breakdown or condition was itself caused by an event of Force Majeure;
      - (d) changes in market conditions; or
      - (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions limited to Company, Company's Affiliates, or any third party employed by Company.

- b. Company may also declare a Force Majeure event if:
  - i. An RC Producer materially breaches the purchase power agreement governing the solar resource; or,
  - ii. The Company declares an event of default against an RC Producer, and the RC Producer fails to cure the event of default in the cure period applicable under the purchase power agreement.
- c. 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.

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.

- d. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its applicable 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 365 days from its occurrence or inception, the Party not claiming Force Majeure may, at any time following the end of such 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 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.
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: Renewable\*Connect  
1800 Larimer St. Suite 1400  
Denver, CO 80202

If to Customer:  
{!Premise\_Address\_\_c},{!Premise\_City\_\_c},  
{!Premise\_State\_\_c} {!Premise\_Zip\_\_c}

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

10. **Governing Law; Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply. Any action brought with respect to this Agreement shall be brought in the courts located in Denver County, Colorado.
11. **Dispute Resolution.** 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. Failure of either Party to enforce any term or condition of this Agreement shall not constitute a waiver of that 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.

12. **Limitation on Liability.** To the extent permitted by law, any liability of either Party to the other for failure to perform its obligations under this Agreement shall be limited to direct, actual damages only, and such direct, actual damages will be the sole and exclusive remedy hereunder. In no event shall either Party be liable to the other Party under this Agreement for any punitive, incidental, indirect, exemplary, special, or consequential damages of any kind whatsoever, including for loss of business opportunity or profits, regardless of whether such damages were foreseen.
13. **Successors and Assigns; Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and, except as expressly set forth in this Agreement, shall not be assigned by Customer without the prior written consent of Public Service, which consent shall not be unreasonably withheld. Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the Subscription Address. Any prohibited assignment or delegation shall be null and void. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto.
14. **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 on behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.
15. **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.
16. **Entire Agreement.** This Agreement, the RC Tariff, and any other applicable tariff constitutes the entire understanding and agreement between the Parties with respect to Customer's participation in the Renewable\*Connect Program, and all prior agreements, understandings, or representations with respect to the subject matter herein are hereby canceled in their entirety and are of no further force and effect.
17. **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.

18. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a signature will be deemed original and binding.
19. **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.
20. **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.
21. **Severability.** In the event any words, phrases, clauses, sentences or other provisions in this Agreement are found to be invalid or violate any applicable law, such offending provision or provisions shall be ineffective to the extent of such violation without invalidating the remainder of this Agreement, and the remaining provisions of this Agreement shall be construed consistent with the intent of the parties hereto as closely as possible, and the Agreement, as reformed, shall be valid, enforceable and in full force and effect
22. **Survival.** The provisions of this Agreement that logically should survive to give effect to the rights and obligations of the Parties shall survive, including without limitation payment and indemnification obligations with respect to events and circumstances arising prior to termination.

[Signature Page Follows]

**As a qualified Xcel Energy customer, I have read, understand, and agree to the terms of the Agreement set forth above:**

For the Customer:

\_\_\_\_\_  
Company Name (if applicable)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

For Public Service Company of Colorado,  
a Colorado Corporation, d/b/a Xcel Energy:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

## RENEWABLE\*CONNECT<sup>SM</sup> COMMUNITY PROGRAM AGREEMENT

This Renewable\*Connect<sup>SM</sup> – Community Program Agreement (the “**Agreement**”) is entered into on XX/XX/20XX (the “**Effective Date**”) by and between Public Service Company of Colorado, a Colorado corporation (“**Public Service**” or “**Company**”) and \_\_\_\_\_ (“**Customer**”) (individually “**Party**” and together, “**Parties**”). 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 (the “**Rules**”), as of the date of this Agreement.

### ARTICLE 1 REC PURCHASE AND TERMS

**1.1. REC Purchase.** Public Service agrees to sell and Customer agrees to purchase Renewable Energy Credits (“**RECs**”) according to the terms of this Agreement and any Purchase Letters now or hereafter entered into between the Parties. The quantity of RECs and the price for such RECs (the “**Contract Price**”) shall be specified in Purchase Letters now or hereafter entered into between the Parties. For purposes of this agreement “**Purchase Letter**” means a letter in the form attached hereto as **Exhibit A**, which is used by the Parties to effect a transaction and constitutes part of and is subject to the terms and provisions of this Agreement. No Purchase Letter shall be binding on the Parties until mutually executed and delivered. Unless otherwise agreed by the Parties, the total number of RECs available for purchase by Customer in a given year shall not exceed 40% of the total number of RECs produced and available for purchase in the Renewable\*Connect<sup>SM</sup> – Community Program in that year. Customer acknowledges and agrees that Public Service has no obligation to enter into any Purchase Letter or sell RECs other than pursuant to a fully executed Purchase Letter, and that RECs that Public Service may sell are subject to availability. Except as otherwise expressly provided in this Agreement, all RECs purchased pursuant to this Agreement and any Purchase Letter are purchased in “AS-IS” condition, without any other representations or warranties from Public Service, express or implied, including any warranty of merchantability or fitness for a particular purpose.

**1.2. Delivery of RECs.** On the delivery date specified in the Purchase Letter, Public Service shall deliver RECs to Customer in accordance with the operating rules of the applicable tracking system, if any (“**Deliver**” or “**Delivery**”). Each Party shall bear its own expenses associated with Delivery. Delivery shall consist of only whole RECs. Upon Delivery of RECs to Customer, all rights, title, and interest in the RECs shall transfer to Customer. Public Service may Deliver RECs from any source, provided that the RECs derived from said source meet all other requirements of this Agreement.

**1.3. Term.** This Agreement will be effective as of the Effective Date and, unless terminated earlier in accordance with its terms, (i) will continue for an initial period of one (1) year (the

“**Initial Term**”), and (ii) thereafter will automatically renew for successive periods of one (1) year each (each a “**Subsequent Term**” and together with the Initial Term, the “**Term**”).

**1.4. Termination.** Either Party may terminate this Agreement for its convenience upon 30 days’ advance written notice to the other Party if such terminating Party is not then in Default.

## **ARTICLE 2 REPRESENTATIONS**

**2.1. Authority.** Each Party represents and warrants to the other Party as of the Effective Date and each date that the Parties execute a Purchase Letter that (i) it is a legal entity, duly formed and validly existing and in good standing under the laws of the state of its formation, (ii) it has the full power and authority to execute, deliver, and perform this Agreement and to carry out the transactions contemplated hereby; (iii) its execution and delivery hereof and performance of the transactions contemplated hereunder have been duly authorized by all requisite entity action, and this Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting creditors’ rights and by equitable principles; (iv) no authorization, consent, notice to or registration or filing with any governmental authority is required for the execution, delivery and performance by it hereof; (v) none of the execution, delivery and performance by it hereof conflicts with or will result in a breach or violation of any law, contract or instrument to which it is bound; (vi) there are no proceedings by or before any governmental authority, now pending or (to the knowledge of such Party) threatened, that if adversely determined could have a material adverse effect on such Party’s ability to perform the Party’s obligations under this Agreement; (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and (viii) it is acting for its own (or its affiliates’) account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement. Each Party represents that the person signing this Agreement on its behalf is authorized to enter into this Agreement on behalf of the Party for whom they sign.

**2.2. Customer Representations and Warranties.** Customer agrees, represents, and warrants to Public Service as of each date that Customer and Public Service execute a Purchase Letter that Customer is a city, county, or other municipal corporation located in the state of Colorado within Public Service’s electric service territory.

**2.3. Public Service Representations and Warranties.** Public Service agrees, represents, and warrants to Customer as of each date that Customer and Public Service execute a Purchase Letter that:

- (a) All RECs sold pursuant to any Purchase Letter under this Agreement meet the definition of RECs set forth in Section 3652 of the Rules and meet the specifications set forth in the Purchase Letter.

- (b) Public Service has not sold the RECs specified in the Purchase Letter to any other person or entity, and that at the time of Delivery all rights, title, and interest in the RECs are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.
- (c) The energy generated with the RECs was not and will not be separately sold, marketed, or otherwise represented as renewable energy, clean energy, zero-emission energy, or in any similar manner by Public Service or any of Public Service's affiliates, except for Public Service's compliance purposes as may be permitted by applicable law.
- (d) The RECs Delivered hereunder will vest in Customer, and Customer will (i) have the exclusive rights to make all claims as to the RECs (ii) have the right to report and register, as applicable, the exclusive ownership of the RECs with any registry, system, agency, authority, or other party, either voluntarily or in compliance with any present or future domestic, international, or foreign law, regulation, registry or program.

### **ARTICLE 3 BILLING AND PAYMENT**

**3.1. Billing and Payment Terms.** Customer shall pay the Contract Price to Public Service within 30 days of the later of (i) the date Customer receives written, facsimile or electronic notice from Public Service to Customer that RECs have been Delivered, and (ii) the date Customer receives an invoice from Public Service reflecting the total amount due to Public Service for the Delivered RECs ("**Payment Date**"). Customer is not obligated to pay for any RECs that have not been Delivered.

**3.2. Disputes.** To the extent that Customer, disputes any part of an invoice, Customer shall pay the undisputed amount invoiced by the Payment Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall be forwarded to the Party to whom such amount is owed within five (5) business days of such determination.

**3.3. Taxes.** Each Party shall pay the taxes lawfully levied upon it by any governmental authority.

**3.4. Invoice and Payment Instructions.** Customer shall make payment by electronic funds transfer, or by other mutually agreed upon method, in immediately available funds, to the bank account name and account number as specified below, or as otherwise notified in writing by Public Service:

Wiring instructions:

[ADD]

## ARTICLE 4 GOVERNING LAW AND DISPUTE RESOLUTION

**4.1. Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

**4.2. Dispute Resolution.** If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of this 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. 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.

**4.3. WAIVER OF JURY TRIAL.** EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT OR PURCHASE LETTER EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, AS WELL AS ANY RIGHT TO CONSOLIDATE ANY ACTION IN CONNECTION WITH ANY MATTER ARISING HEREUNDER WITH ANY OTHER MATTER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

## ARTICLE 5 DEFAULT AND REMEDIES

**5.1. Default.** A Party is in default (“**Default**”) hereunder if that Party (the “**Defaulting Party**”) or its affiliate does any of the following (each an “**Event of Default**”):

- (a) breach any of its material obligations herein and not cure within thirty days of written notice of such breach;
- (b) if any representation or warranty made by it herein proves to have been misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation and warranty correct and not misleading within 30 days of written notice.

**5.2. Remedies.** Upon an Event of Default by a Party, the other Party (the “**Non-Defaulting Party**”) may terminate this Agreement. The Non-Defaulting Party may, except as otherwise specifically provided herein, pursue each remedy provided for under this Agreement in addition to every other remedy provided for herein or available at law or in equity.

**5.3. LIMITATION ON DAMAGES.** THE DEFAULTING PARTY’S LIABILITY WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT, ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL,

OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING FOR LOSS OF BUSINESS OPPORTUNITY OR PROFITS, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEN.

**5.4. Force Majeure.**

- (a) “Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance: is not within the control of and is not the result of the fault or negligence of the Party claiming its occurrence, and which by exercise of due diligence and foresight could not reasonably have been avoided, provided, however, that Force Majeure shall not include: (i) Customer’s inability or unwillingness to use the RECs; (ii) Customer’s ability to purchase similar RECs from another party on terms superior to the Customer’s terms herein; (iii) acts or omissions of a third party, unless such acts or omissions are themselves excused by reason of Force Majeure; (iv) changes in market conditions; or (v) changes in regulation that affect the value of RECs or compliance obligations of a Party related thereto.
- (b) 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.
- (c) 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 any payment obligations under this Agreement, or any other obligations under this Agreement to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.
- (d) In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its applicable 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 365 days from its occurrence or inception, the Party not claiming Force Majeure may, at any time following the end of such 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 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.

## ARTICLE 6 STANDARD PROVISIONS

**6.1. Notices.** All invoices, notices, requests, demands, offers, and other communications required or permitted to be made under this Agreement will be in writing and will be effective only if delivered: (a) in person, (b) by a nationally recognized delivery service, or (c) by United States Mail. Either Party may change its address or contact person(s) for notices by giving notice of such change consistent with this Article.

If to Public Service:

☐

☐

☐

Attn: ☐

Phone: ☐

Email: ☐

If to Customer:

☐

☐

☐

Attn: ☐

Phone: ☐

Email: ☐

**6.2. Authorized Representatives.** Each Party shall designate (and shall have designated at all times) one representative authorized to act and administer this Agreement on behalf of the designating Party and, in connection therewith, the purchase and sale of RECs and the execution of Purchase Letters (each, an “**Authorized Representative**”) and shall provide to the other Party (and update, if necessary) the name, address, telephone number, email address, facsimile and any other pertinent contact information (collectively, “**Contact Information**”) for its Authorized Representative. The initial Authorized Representatives shall be:

For Public Service:

☐

☐

☐

Attn: ☐

Phone: ☐

Email: ☐

For Customer:

☐

☐

☐

Attn: ☐

Phone: ☐

Email: ☐

A Party may replace its Authorized Representative by written notice to the other Party. Neither Party’s Authorized Representative shall have any authority to amend, modify, or waive this Agreement or any provision hereof, but the Authorized Representatives may provide information where expressly specified herein or to the extent reasonably necessary for the Parties’ respective performance of their obligations hereunder.

**6.3. Assignment.** Neither Party shall assign this Agreement, in whole or in part, without the other's written consent, which will not be unreasonably withheld, conditioned or delayed; provided, that either Party may assign this Agreement to any Affiliate of such Party or any successor in interest of all of its assets, or any substantial portion of its service territory (in the case of Public Service) or territory (in the case of Customer if Customer is a Governmental Entity). All of the rights, benefits, liabilities, and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and permitted assigns. By consenting to one assignment a Party will not be deemed to have consented to a subsequent assignment.

**6.4. Counterparts.** This Agreement may be executed by PDF or telefacsimile and in one or more counterparts, all of which taken together will constitute one and the same original instrument.

**6.5. Entire Agreement.** This Agreement, together with any fully executed Purchase Letters, constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all previous communications, representations, or contracts, either written or oral, that purport to describe or embody the subject matter hereof. There are no oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

**6.6. Exhibits.** The exhibits attached hereto are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. In the event of a conflict between this Agreement and a Purchase Letter, the terms of the Purchase Letter shall prevail.

**6.7. 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 on behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

**6.8. No Third-Party Beneficiaries.** There are no intended third-party beneficiaries hereof, and this Agreement should not be construed to create or confer any right or interest in or to, or to grant any remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established herein.

**6.9. 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.

**6.10. Severability.** In the event any words, phrases, clauses, sentences or other provisions in this Agreement are found to be invalid or violate any applicable law, such offending provision or provisions shall be ineffective to the extent of such violation without invalidating the remainder of this Agreement, and the remaining provisions of this Agreement shall be construed consistent with

the intent of the parties hereto as closely as possible, and the Agreement, as reformed, shall be valid, enforceable and in full force and effect.

**6.11. Survival.** This Agreement will continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

**6.12. Waiver, Amendment.** None of the terms or conditions of this Agreement may be amended or waived except in writing and signed by the Parties. The Parties agree that no waiver, amendment, or modification of this Agreement will be established by conduct, custom, or course of dealing. The failure of a Party to require performance of any provision of this Agreement will not limit such Party's right to seek such performance at a later time. Similarly, a Party's waiver of its rights with respect to any Default or any other matter arising in connection with this Agreement will not be considered a waiver with respect to any subsequent Default or matter.

**6.13. Indemnification.** Except for Customers that are a Governmental Entity, Customer 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 made by others arising from or out of any event, circumstance, act or incident arising out of the Parties' obligations under this Agreement. As used in this Agreement, "Governmental Entity" means any federal, state or local government, board, department, agency, special district, instrumentality, or other similar entity entitled to rely on the rights, immunities or protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time.

**6.14. Change in Law.** If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or substantially prohibited, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties understand and agree to the terms and conditions contained herein and agree to be bound thereby.

|                  |  |
|------------------|--|
| <b>Customer:</b> | <b>Public Service Company of Colorado,<br/>a Colorado Corporation, d/b/a Xcel Energy</b> |
| Signature        | Signature  |
| Name             | Name   |
| Title            | Title  |
| Date             | Date   |

### Purchase Letter #[\_\_]

This Purchase Letter #[\_\_] describes a transaction between Public Service Company of Colorado, a Colorado corporation (“Public Service” or “Company”) and \_\_\_\_\_ (“Customer”) for the sale, purchase and Delivery of Renewable Energy Credits (“**RECs**”) pursuant to and in accordance with the terms of the Renewable\*Connect<sup>sm</sup> Community Program Agreement between the Parties dated [DATE] (the “**Agreement**”) and constitutes part of and is subject to the terms and provisions of the Agreement. Provided, that, to the extent there is a conflict between a provision of the Agreement and this Purchase Letter, the terms of this Purchase Letter shall control for the purposes of this transaction.

Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Agreement and 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 the Agreement.

#### Purchase Terms:

|  |          |
|--|----------|
| Purchase Date:   |          |
| Transaction Reference:                                 |          |
| Renewable Resource Technology Type:                    |          |
| Resource Name:   |          |
| Location of Resource:                                  | Colorado |
| Calendar year to which RECs will be applied (vintage): |          |
| Quantity of RECs:                                      |          |
| Contract Price (\$/REC):                               |          |

#### Delivery Terms:

|  |  |
|--|--|
| Delivery Date:                                 |  |
| Tracking System:                               |  |
| Customer Tracking Account Name:                |  |
| Customer Delivery Contact [Name, Email]:       |  |
| Public Service Delivery Contact [Name, Email]: |  |

The Parties agree to the transaction set forth herein and each Party represents that the person signing this Purchase Letter on its behalf is authorized to execute on behalf of the Party for whom they sign.

|                  |  |
|------------------|--|
| <b>Customer:</b> | <b>Public Service Company of Colorado,<br/>a Colorado Corporation, d/b/a Xcel Energy</b> |
| Signature        | Signature  |
| Name             | Name   |
| Title            | Title  |
| Date             | Date   |