



# 2017 Renewable Energy Standard Compliance Report

Public Service Company of Colorado  
June 2018

**Proceeding No. 16A-0139E**

# **2017 RENEWABLE ENERGY STANDARD**

## **COMPLIANCE REPORT**

### **I. Statement of RES Compliance & Introduction**

Public Service Company of Colorado (“Public Service” or the “Company”) is pleased to report that the Company is in compliance with the Colorado 2017 Renewable Energy Standard (“RES”). For 2017, the RES required that 20 percent of the Company’s electric energy sales be served from renewable energy, with 1.75 percent from distributed generation. One-half of the distributed generation must be from Retail Distributed Generation.

Colorado Public Utilities Commission (the “Commission”) Rule 3659(a) states that Renewable Energy Credits (“RECs”) will be used to comply with the RES. The Rules define each REC to mean a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributed to a specific amount of electric energy generated from an eligible energy resource. One REC results from one megawatt-hour (“MWh”) of electric energy generated from an eligible energy resource. By statute, certain eligible energy resources qualify for REC multipliers such that one MWh from these resources can generate more than one REC for compliance with the RES. Senate Bill 13-252 modified the REC multiplier to eliminate a REC multiplier for eligible energy resources that became operational after January 1, 2015.

As a result of acquiring the generation described below, Public Service has sufficient RECs to meet its RES obligation for the 2017 compliance year. Public Service also projects that under the RES it will have sufficient: (1) Non Distributed Generation

("DG") RECs from existing Eligible Energy Resources for RES compliance well beyond 2020; (2) Wholesale DG RECs from existing Eligible Energy Resources to comply with the RES beyond 2020; and (3) Retail DG RECs from existing customer sited solar resources as well as existing acquisition commitments under Solar\*Rewards and Solar\*Rewards Community programs to comply with the RES beyond 2020.

Pursuant to Colorado Public Utilities Commission Rule 3662, investor-owned Qualifying Retail Utilities ("QRUs"), like Public Service, are required to file an annual Compliance Report ("Report") that contains the information set forth in Rule 3662. In general, the Report is designed to give the Commission a status on the QRU's compliance with the Renewable Energy Standard for the most recently completed compliance year. The Report will be reviewed for compliance in accordance with Rule 3663.

Public Service is providing this Report in compliance with Rule 3662, which demonstrates that the Company is in compliance with Colorado's 2017 Renewable Energy Standard, consistent with the Company's Commission-approved 2017 RES Compliance Plan ("2017 Plan"), (Proceeding No. 16A-0139E), approved in Decision No. C16-1075 (as part of the Non-Unanimous Comprehensive Settlement Agreement in Proceeding No. 16AL-0048E).

## **II. Overview of the Company's Efforts to Meet the Renewable Energy Standard**

In addition to meeting the Renewable Energy Standard requirements for 2017, Public Service remains well-positioned to meet the Colorado RES over the next several years. The RES requires the Company to generate 30 percent of electric retail sales from renewable resources by 2020, with three percent of that energy coming from renewable distributed generation. The Company's compliance strategy and acquisition of eligible energy resources reflects a desire to protect the environment, provide customers with renewable energy choices that they want and value, and follow through on our commitment to provide safe, reliable and increasingly clean energy at a competitive price. In this portion of the Report, the Company briefly describes and summarizes some of its efforts to meet these commitments.

### **A. 2016 Comprehensive Settlement Agreement**

In August 2016, Public Service, along with 22 other parties representing some of the Company's biggest electricity users, solar and wind power developers, rooftop solar companies and trade groups, consumer and low-income advocates, and environmental advocacy groups, reached a settlement agreement to open up new avenues for customer choice and expanded clean energy program offerings. The Comprehensive Settlement Agreement approved by the Colorado Public Utilities Commission addressed three pending proceedings: (1) an update to the utility's rate design structures (Phase II electric rate case, Proceeding No. 16AL-0048E); (2) creation of a new solar power program for residential and business customers (Renewable\*Connect, Proceeding No. 16A-0055E); and (3) an expansion of the utility's renewable energy programs over the next three years (2017-2019 RES Plan, Proceeding No. 16A-0139E). The



Comprehensive Settlement Agreement will allow Public Service to offer customers more control over their energy mix, bring more carbon-free power onto the system, and support emerging energy technologies—all while ensuring power remains reliable, and prices stay reasonable and affordable for all customers.

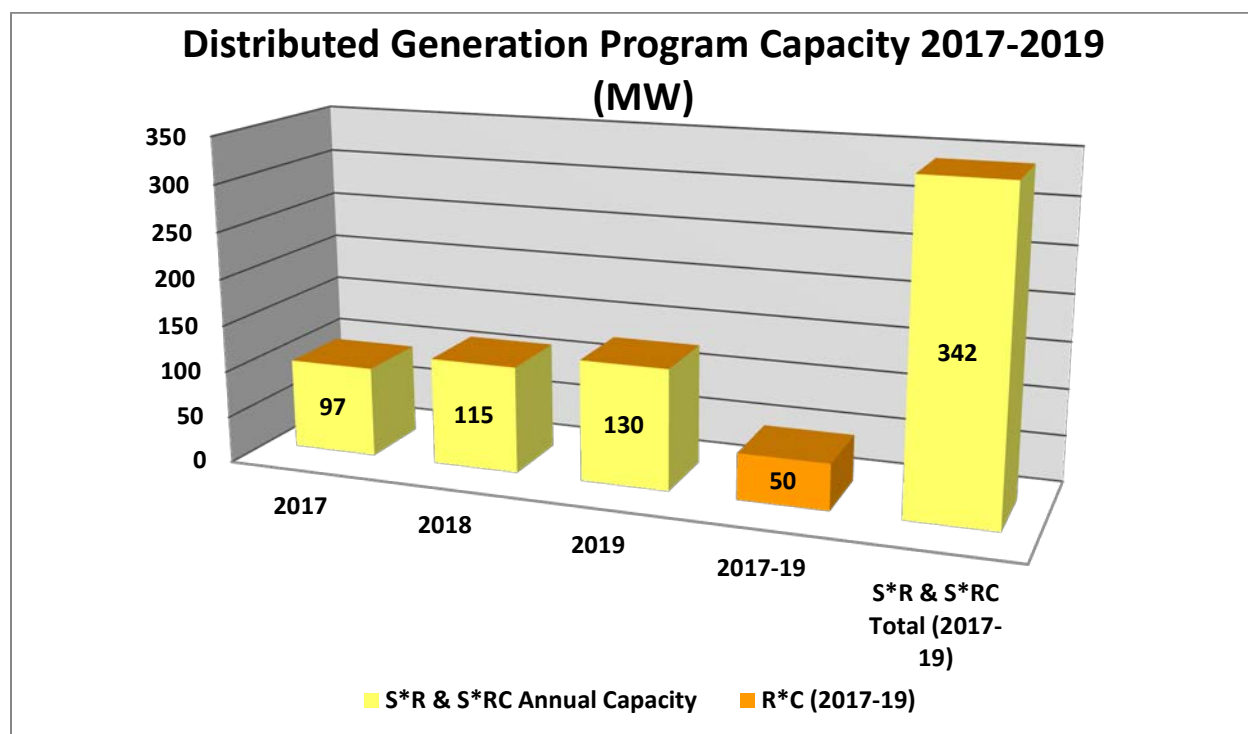
Key outcomes of the Comprehensive Settlement Agreement include:

- **Growth of Public Service’s Solar\*Rewards and Solar\*Rewards Community Programs.** Public Service will expand the availability of its rooftop solar and solar gardens programs. The expansions approved as a result of the settlement agreement will result in up to 342 megawatts (“MW”) of new solar power between 2017 and 2019 (97 MW in 2017; 115 MW in 2018; and 130 MW in 2019).
- **Solar power for traditionally under-served customers.** In an effort to make solar power more accessible to low-income customers, the settlement agreement contemplates a low-income rooftop solar program (See Attachment J) and to expand low-income access to community solar gardens. Additionally, Public Service will increase solar garden access up to 5.25 MW of company-owned resources and up to 4 MW per year of competitively bid community solar gardens designated to serve 100 percent low-income customers and service providers.
- **A new solar power program to complement its existing renewable portfolio.** In 2018, the Company will launch a new program called Renewable\*Connect. Similar to the Company’s Windsource® program, Renewable\*Connect will give customers a convenient and simple way to “go solar” by purchasing up to 100 percent solar power for their home or business—even if they do not own their

residence, do not live near a solar garden, or are unable to install private solar panels on site.

- **Windsource price reduction.** The settlement agreement lowered the Windsource® premium price from \$2.16 per kilowatt-hour block to \$1.50 per kilowatt-hour block beginning in 2017, making it more affordable for customers to get some or all of their energy from wind-powered resources.
- **Energy storage.** The settlement agreement also allowed Public Service to craft standards for connecting energy storage systems (e.g., batteries)—which can store energy for a home or business—to its system. Energy storage is considered a key emerging technology that can help integrate more wind and solar energy onto the power grid and help address the intermittent availability of those resources.
- **Recycled Energy program.** The settlement agreement also sets forth terms for finalizing the Company's proposed Recycled Energy program.

The graph below shows the maximum distributed generation program capacity available to customers for the years 2017 through 2019 that was made possible by the Comprehensive Settlement Agreement.



## B. Wind Energy

Wind energy continues to play a significant role in Xcel Energy's renewable energy portfolio. Public Service's early actions to add wind energy at competitive prices and proactively comply with state standards have benefitted the customers we serve and the state. For 2017, Xcel Energy was recognized as the nation's No. 2 utility wind provider by the American Wind Energy Association, a national trade association. Prior to 2017, Xcel Energy was the nation's No. 1 utility provider for 12 consecutive years.

Wind energy on Xcel Energy's systems has nearly doubled since 2010 and will continue to expand in the future. Last year wind energy made up 23 percent of Public

Service Company of Colorado's energy supply. At the end of 2017, Public Service had more than 2,500 MW of installed wind energy capacity on its system and Xcel Energy had nearly 6,700 MW of wind across its various utility operating companies.

The Company is continuing to execute its 'steel for fuel' strategy, by building new wind farms that will result in billions of dollars in future fuel savings for customers. Construction began in the spring of 2017 for the Company's Rush Creek Wind Project. Once completed in 2018, Rush Creek will become one of the state's largest wind generation facilities and is expected to save customers over \$400 million through the life of the project.

Additionally, the Company expects to add hundreds of MW of new wind and solar generation as a result of its proposed Colorado Energy Plan ("CEP"), which was introduced as part of the 2016 Electric Resource Plan proceeding in collaboration with a diverse coalition of supporters. The subsequent 2017 All-Source Solicitation garnered some of the lowest cost wind and solar bids ever seen across the industry, which enabled the Company to develop a cost-effective CEP resource portfolio for consideration by the Commission. Approval of the CEP, expected in fall 2018, would result in replacing existing coal-fired generation with significant new, low-cost eligible energy resources and continued cost savings to customers.

### **C. Windsource**

Wind energy also is available as a customer choice through the Company's popular Windsource® program, which began in 1998 and continues to be one of the largest voluntary green-energy programs in the United States. The current structure of



our Windsource® program originated in the terms of a settlement agreement the Commission approved in Proceeding No. 08A-260E and more recently in the settlement of the Company's 2017-2019 Plan.

Windsource® is certified through the Green-e Energy program. To be Green-e Energy certified, the corresponding RECs associated with the energy sold under Windsource® cannot be used to fulfill a state renewable energy goal, and cannot be "double-counted" towards that goal, with one exception. Pursuant to Green-e's National Standard Version 2.1: "If the product meets 100% of a customer's electricity use with eligible renewables, Green-e Energy allows a percentage of a product's content to be satisfied by Renewable Portfolio Standard ("RPS") state-mandated renewables up to the percentage RPS requirement." Consequently, for Windsource® customers who purchased all of their electricity under the Windsource® program in 2017, twenty percent of the RECs associated with the energy they purchased were retired to meet the Renewable Energy Standard. The Commission approved this methodology as part of the Company's 2010 RES Compliance Plan in Decisions No. C10-1033 and R10-0586 in Proceeding No. 09A-772E. Information describing the method of retiring RECs for 100% Windsource® customer sales has been provided to our Windsource® customers and is also available on the Windsource® pages on Xcel Energy's website.

The Company charges a Windsource® premium to those customers who subscribe to the program. From the settlement of the 2017 Plan, the Windsource® premium price was reduced to \$1.50 per 100 kilowatt-hour block, or 1.5¢/kWh, on a market basis. Premiums from sales under the Windsource® program are credited back to the RESA (\$2.9 million in 2017).

## **D. Solar Energy**

The Company continues to integrate ever-increasing levels of solar energy with a combination of low-cost large-scale utility solar projects, community solar gardens, and private customer-sited solar options. Public Service offers customers a growing number of renewable options such as Solar\*Rewards<sup>®</sup>, Solar\*Rewards<sup>®</sup> Community<sup>®</sup>, stand-alone net metering, and Renewable\*Connect<sup>®</sup> in addition to Windsource<sup>®</sup>.

### **i. Utility Solar Installations**

Xcel Energy is committed to developing solar resources at the best price to benefit the greatest number of customers across the state. The Company purchases large-scale solar generation directly from sizable solar installations, many of which are located in the San Luis Valley in south-central Colorado. These installations include the SunEdison facility (6.95 MW<sub>AC</sub>), the SunPower Greater Sandhill facility (19 MW<sub>AC</sub>), the Iberdrola Renewables San Luis Valley Solar facility (30 MW<sub>AC</sub>), the Solar Technology Acceleration Center ("Solar TAC") (0.99 MW<sub>AC</sub>), and the Cogentrix Alamosa Solar Generating Project (30 MW<sub>AC</sub>). In 2016, Solar Star III (50 MW<sub>AC</sub>) and Comanche Solar (120 MW<sub>AC</sub>) came online.

The Comanche Solar Project approved under the 2013 All-Source Solicitation achieved commercial operation in 2016. This 120 MW<sub>AC</sub> project with approximately 450,000 photovoltaic panels was built adjacent to the Company's Comanche generating plant in Pueblo, Colorado on approximately 900 acres of under-utilized grazing land surrounded by existing and future industrial land. The Comanche Solar Project is the largest solar generating facility in the state, the largest east of the Rocky Mountains, and one of the largest in the nation. Over the course of the project's 25-year life, it will

produce more than six billion kilowatt hours of clean solar energy and is expected to reduce CO<sub>2</sub> emissions by approximately 3.5 million tons.

Large-scale installations make solar power available at a low cost to the greatest number of people in the communities Xcel Energy serves. The Company supports the development of large, central solar because of the benefits that come with direct delivery and economies of scale for our customers.

## **ii. Private Solar Installations**

Additionally, more than 40,000 Xcel Energy customers in Colorado have private on-site or rooftop solar through either through the Company's Solar\*Rewards® program or are interconnected outside the program as "Net Metered Only" systems. The Company's Small program (with average system size of approximately 6 kW) now sees more PV systems being interconnected outside of its Solar\*Rewards Program than inside the program. Additionally, more Net Metered Only capacity was installed in 2017 than in all previous years.

Solar\*Rewards currently supports the installation of systems at several program levels—small systems up to 25 kilowatts and medium systems between 25.1 to 500 kilowatts. The program also has issued requests for proposals to support large systems over 500 kilowatts. Through Solar\*Rewards, customers interested in installing solar systems at their homes or businesses receive incentives to participate in this program.

The 2016 Comprehensive Settlement Agreement allows the Company to acquire customer-sited solar up to 123 MW of solar energy from small installations, up to 72 MW from medium installations, and 30 MW for large installations from 2017 through 2019, at the annual capacities and incentive levels shown below:

<b>Solar*Rewards Incentives</b>	<b>2017</b>		<b>2018</b>		<b>2019</b>		<b>TOTAL</b>
	Capacity (up to)	Incentive per kWh	Capacity (up to)	Incentive per kWh	Capacity (up to)	Incentive per kWh	<b>123 MW</b>
Small Option A	24 MW	\$0.005	24 MW	\$0.005	24 MW	\$0.005	
Small Option B	9 MW	\$0.0500	18 MW	\$0.0475	24 MW	\$0.0350	
Medium	24 MW	\$0.0475	24 MW	\$0.0425	24 MW	\$0.0375	<b>72 MW</b>
Large	6 MW	RFP	10 MW	RFP	14 MW	RFP	<b>30 MW</b>
<b>TOTAL</b>	<b>63 MW</b>		<b>76 MW</b>		<b>86 MW</b>		<b>225 MW</b>

Unused capacity allocated to Option B will be rolled into Option A capacity according to Settlement terms. Customer-owned and third-party owned systems receive the same incentive levels for a 20-year term. Small solar system capacity for systems less than or equal to 25 kW is released monthly with one-twelfth of the available capacity released each month. Medium system capacity for systems greater than 25 to 500 kW is released quarter with 25 percent of the annual capacity allocated each quarter.

Large-solar system capacity is released and awarded through a competitive Request for Proposal (“RFP”) process for net metered systems greater than 500 kW in size, capped at 120 percent of the customers’ annual load. The RFP requests proposed pricing for the Company to purchase RECs from the production of the solar array. Price is typically the primary differentiator and selection criteria. In addition to the REC incentive, the customer(s) will receive net energy metering credits. Capacity for this program was last offered in 2012.



A low-income rooftop solar program was added under the Comprehensive Settlement Agreement and adds up to 300 systems over a three year period: up to 75 systems in 2017; 100 systems in 2018 and 125 systems in 2019. Systems can be sized up to 3.5 kW

### **iii. Community Solar Gardens**

The Community Solar Garden (“CSG”) market is expanding rapidly in Colorado and is widely available throughout the Company’s service territory with customers able to subscribe to a CSG in nearly every county the Company serves. By the end of 2017 there were 33.5 MW of CSGs operational and a 112 MW either operational or with project capacity awarded.

Public Service launched Solar\*Rewards Community® (“S\*RC”) in Colorado in 2012, after the state became one of the first to approve the solar garden concept in 2010. In Colorado, the Company enables Solar\*Rewards Community for customers who want to participate in shared, centralized solar installations. CSGs are an option for customers who want to support solar energy but lack certain qualities (physical – roof space, shading, etc. or financial) to install systems on-site. Solar developers build community-based shared solar installations interconnected to Public Service’s system and offer subscriptions with various purchase arrangements to customers.

The Company has grown a solid portfolio of solar garden projects, and with the additional capacity and segmenting from the Comprehensive Settlement, this portfolio will become even more robust in the years to come, with program capacities added as shown below:

<b>Community Solar Garden Capacity (MW)</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>TOTAL</b>
Minimum	15	15	15	<b>45</b>
Maximum <sup>1</sup>	30	35	40	<b>105</b>
100% Low-income CSGs	4	4	4	<b>12</b>
<b>Total</b>	<b>34</b>	<b>39</b>	<b>44</b>	<b>57 to 117</b>

#### **iv. Renewable\*Connect®**

Renewable\*Connect allows customers to subscribe to solar output from a Company-owned large-scale solar energy installation with competitive pricing, flexible subscription terms, and no program costs subsidized by other customers. It's quick and easy and it gives subscribers full rights to all of the clean energy benefits from the solar energy produced. The program sells customers renewable energy from a 50 MW solar array located near Deer Trail, Colorado (Arapahoe County) that will come online in December 2018. Because of the structure of Renewable\*Connect subscriptions, RECs from the program will all be retired on behalf of customer subscribers and will not be included in RES accounting.

---

<sup>1</sup> Annual maximum includes up to 0.5 MW non-low income standard offer CSG, up to 2 MW of Company-owned low-income CSGs and 0.5 low-income standard offer.

### **III. 2017 Results**

#### **A. Non-Distributed Generation**

As a result of prior Resource Plan filings, the Company currently has over 2,500 MW of wind generation capacity on its system that qualifies as non-DG eligible energy resources. The Company acquires the full electrical output as well as all RECs produced from these wind resources for compliance with the Non-DG portion of the RES. All of the generation from these facilities is eligible for the 1.25 REC multiplier when used for compliance with the exception of the 249 MW Golden West wind farm that went commercial at the end of 2015. The Company currently has 13 operational large wind resources that are considered non-DG for RES compliance (see Attachment C).

#### **B. Windsource®**

In 2017, 49,686 residential and commercial/industrial Colorado customers purchased 188,608 MWh of Windsource® and contributed \$2.9 million to the RESA account.

#### **C. Wholesale DG**

The Company currently has 208 MW of resources which qualify as Wholesale DG resources for RES compliance. This includes various hydroelectric resources, landfill gas resources, photovoltaic solar resources, and wind resources. All of the generation from these facilities is eligible for the 1.25 REC multiplier when used for compliance with the Colorado RES. The following resources are currently operational and are considered as Wholesale DG for RES compliance (see Attachment C):

SunE Alamosa Solar  
Cogentrix Solar  
Greater Sandhill Solar  
San Louis Solar (Iberdrola)  
SolarTAC (SunE, Amonix, EPRI)  
Northern Colorado Wind II  
NREL Siemens Wind  
Ridgecrest Wind  
Waste Management Landfill Gas  
Additional owned and contracted hydroelectric resources

#### **D. Retail Distributed Generation**

At the end of 2017, the Company had more than 340 <sub>DC</sub> MW of customer-sited solar on our Colorado system.

##### **i. Solar\*Rewards**

In 2017, the Company received 2,774 Solar\*Rewards applications for small systems. 2,403 small solar systems were installed for a total of approximately 14.4 MW.<sup>2</sup> No applications were received for Option B during 2017, and that capacity was made available in 2018 in accordance with the Comprehensive Settlement Agreement terms. For 2017 the Company is now seeing more applications for smaller systems (systems up to 25 kW) being interconnected outside of its Solar\*Rewards Program (commonly referred to as Net Metered Only systems) than inside the program with over 4,800 applications being received for interconnection. Additionally, more Net Metered Only capacity was installed in 2017 than in all previous years.

For medium systems in 2017, 159 total applications were received and 36 systems were installed for a total of approximately 6.1 MW.

---

<sup>2</sup> Systems are not always installed in the same calendar year in which applications are received.



The Company announced its Large Solar\*Rewards Request for Proposal (“RFP”) on July 7, 2017 for customer-sited projects. The RFP sought up to 6 MW of net-metered projects larger than 500 kW. Public Service received fourteen bids from seven different solar developers. The full 6 MW of capacity was awarded to NextEra Energy Resources Acquisitions, LLC as the developer/project owner and the customer is IBM Boulder Resiliency Center. NextEra/IBM agreed to move forward with the project on November 1, 2018, and the proposed commercial operation date is April 1, 2019.

## **ii. Energy Storage**

2017 was a productive year in which the Company engaged with stakeholders to effectuate the energy storage principles outlined in the Comprehensive Settlement Agreement. This was accomplished by producing a series of technical Guidance Documents containing a variety of configurations, eight in total, which developers/customers could choose that best fit their standalone battery needs or ones that will operate in parallel with the grid and fit their existing or new on-site solar system. By early 2017, the Guidance Documents were posted to the Company’s external web site and the necessary tariff changes were in place for the Company to begin accepting applications. At the end of 2017, the Company had 215 applications in various stages from approval to completion.

## **iii. Solar\*Rewards Community Solar Gardens**

15.5 MW from eight new Community Solar Gardens came online during 2017. At the end of 2017, the Company had 86 CSG projects either operational or in various stages of development comprising a total of 112<sub>DC</sub> MW, with 33.5 MW installed.

On February 7, 2017, the Company filed a Petition for Declaratory Ruling requesting that the Commission enter an order declaring that as part of its CSG solicitation process, Public Service may lawfully accept bids from CSG developers at negative prices for RECs. Through multiple rounds of legal briefing and comments, the Commission requested a hearing on October 4, 2017. Through Decisions C18-0149 (March 1, 2018) and C18-0276 (April 20, 2018) the Commission reached its decision allowing the Company to lawfully accept bids from developers of CSGs at negative prices for RECs. These Decisions were necessary direction from the Commission to continue with the Company's competitive solicitations.

Due to the then pending decision for negative RECs (Proceeding No. 17D-0082E), the Company only issued its 2017 Low Income RFP and Low Income Standard Offer in 2017. The Company will issue the 2017 S\*RC RFP and Standard Offer in 2018.

#### **IV. REC Tracking & Compliance**

The Company tracks RECs through an internal REC tracking system and the Western Renewable Energy Generation Information System ("WREGIS") system. Commission Rule 3659(j) requires all renewable energy resources 1 MW and larger to be registered with WREGIS. WREGIS is a third-party REC tracking and verification system for the western states (including Colorado), developed through a collaborative effort between the Western Governors Association, the Western Regional Air Partnership, and the California Energy Commission. The Company, through Xcel Energy Services Inc. ("XES"), participates in the Stakeholder Advisory, Policy and Change Control Committees of WREGIS. The Company believes that WREGIS and other regional REC tracking and verification systems add significant credibility to, and aid in the development of, REC markets. Xcel Energy's registered generating facilities have been uploading data to WREGIS since the last quarter of 2008.

During the 2017 compliance year, the Company used its internal REC tracking database to retire RECs from distributed generation solar facilities under 1 MW for 2017 RES compliance. Any WREGIS RECs that were used for 2017 compliance or Windsource® were also retired in WREGIS. During the 2017 compliance year the Company maintained its internal REC tracking database and WREGIS in tandem.

##### **A. Demonstration of Compliance**

In order to demonstrate compliance with the Colorado 2017 RES, Public Service has included several attachments to this report providing the data identified in Rule 3662, which are set forth in Attachment A, Rule Requirements.

Attachment B shows the Company's 2017 actual retail energy sales and lays out the resulting Renewable Energy Standard compliance requirements which flow from those sale numbers.

Attachment C, Renewable Energy Credit Compliance Summary, is similar to Tables 4-2 and 4-3 as originally filed in our 2017 RES Compliance Plan, Volume 2. The numbers reflect actual RECs generated in 2017 and RECs used for compliance in 2017.

Attachment D compares the 2017 RESA forecasted expenditures and revenues to the actual expenditures and revenues. It also compares the 2017 forecasted RESA deferred account balance and the 2017 actual RESA deferred account balance. The Company designed this attachment so that it reflects the relevant information contained in Tables 7-2 (a) – (c) as filed in the Direct Testimony of Robin L. Kittel, Attachment RLK-2, in the 2017 Plan. Although Attachment D reflects the actual totals by column, it also contains a breakdown of the actual costs by individual resource. This segregation of costs by resource allows one to easily assess the resources that contributed to the actual RESA costs for 2017.

Attachment E sets forth each individual resource that has costs that are allocated between the RESA and ECA and provides the incremental costs for each resource expressed as \$/MWh charged in 2017. Set forth at the bottom of the attachment are the adjustments, if any, made to the \$/MWh figure. Second, Attachment E shows the Average Hourly Incremental Cost ("AHIC") for 2017 and volumes of Solar\*Rewards that elected to sell excess kWh credits to the Company per Rule 3664 (b). The AHIC is also used to compensate Solar\*Rewards Community garden owners for unsubscribed

energy required by Rule 3665 (c)(V). The 2017 volumes of the unsubscribed energy are also shown in Attachment E.

As part of Commission Decision No. C11-1080 approving the Company's 2010 RES Compliance Plan, the Commission directed the Company to provide comparisons between the modeled incremental costs and the actual incremental costs of eligible energy resources that are charged against the RESA account, and to provide an explanation of significant deviations. Attachment D provides the modeled costs as compared to actuals where Attachment F explains the differences between the modeled costs and the actual costs of eligible energy resources to the extent the variance is notable.

Attachment G provides a table with all S\*RC projects that are either operational or that have been awarded and in various stages of development.

Attachment H provides a copy of all Solar\*Rewards Community contracts signed since the Company's last Compliance Report.

Attachment I contains the Solar\*Rewards Community volumes and corresponding billing credits per rate class, the average hourly incremental cost and the total number of unsubscribed kWhs as required by Rule 3662 (a)(XVIII). Also included in Attachment I are associated metrics regarding low-income subscriptions.

Attachment J is a new attachment to the annual RES Report which contains the Colorado Energy Office's 2017 Report on its Solar for Low-income and the Weatherization Assistance Program. This report is required to be filed in the 2017 RES Report as required per the Comprehensive Settlement Agreement.

Finally, Attachment K is an another new section for the annual RES Report as required from the Comprehensive Settlement Agreement which has been added to summarize activities associated with three of the Stakeholder Groups (other than the Pilot Stakeholder Group) that were formed following that proceeding. Summaries include discussion items and outcomes including any recommendations that the Company has for next steps.

Because the Company is not claiming that the retail rate impact cap limitation inhibited its ability to meet the requirements, there is no need to report the data required in Subsection (XV) (c) of Rule 3662.

In compliance with Rule 3662 (XV), the Commission has approved the Company's methodology for calculating the retail rate impact for the 2017 RES compliance year. Because the Company is not claiming that the retail rate impact cap limited its ability to comply with the 2017 RES, no modifications pertaining to the calculation of the retail rate impact for 2017 were necessary.

The Company is providing the Commission with an electronic copy of this filing, as well as posting it on the Company's website at [www.xcelenergy.com](http://www.xcelenergy.com) under "Filings" in the Rates and Regulations directory.

# Attachment A

**Code of Colorado Regulations 4 CCR 723-3**

**3662. Annual RES Compliance Report.**

- (a) Each investor owned and cooperative electric association QRU shall file an annual RES compliance report no later than June 1 to report on the status of the QRU's compliance with the RES for the most recently completed compliance year. Unless expressly noted otherwise, the annual RES compliance report of each investor owned and cooperative electric association QRU shall provide the following information for the most recently completed compliance year.
  - (I) The total MWH sold by the QRU to its retail customers in Colorado and the associated eligible energy required for compliance with the RES, including the requirements for retail renewable distributed generation and wholesale renewable distributed generation, as applicable.
  - (II) The total amount and source of eligible energy and RECs acquired by the QRU during the compliance year for to meet the RES, including the requirements for retail renewable distributed generation and wholesale renewable distributed generation, as applicable. The QRU shall separately identify and quantify amounts of eligible energy and RECs by each type of resource, including residential retail renewable distributed generation and nonresidential renewable distributed generation, as applicable. The QRU shall also separately identify eligible energy and RECs generated by early eligible energy resources.
  - (III) The total amount of RECs by category acquired by the investor owned QRU during the compliance year and the total amount and source of eligible energy generated by the QRU-owned eligible energy resources.
  - (IV) The total amount of eligible energy and RECs borrowed forward, pursuant to rule 3654, in previous compliance years that were made up during the compliance year to achieve compliance with each component of the RES.



- (V) The total amount of eligible energy and RECs borrowed forward, pursuant to rule 3654, from future compliance years to achieve compliance with each component of the RES in the compliance year.
- (VI) The total amount and source of eligible energy and RECs the QRU is carrying back from the year following the compliance year under rule 3654 to achieve compliance with each component of the RES in the compliance year.
- (VII) The total amount of eligible energy and RECs the QRU has carried forward from prior calendar years under rule 3654 to apply in the compliance year for each component of the RES.
- (VIII) The total amount of eligible energy and RECs the QRU has acquired in the compliance year that the QRU proposes to carry forward under rule 3654 to future years for each component of the RES.
- (IX) The total amount of eligible energy and RECs the QRU has counted toward compliance with the RES, including the requirements for retail renewable distributed generation and wholesale renewable distributed generation, as applicable, in the compliance year.

The QRU shall separately identify amounts of renewable energy by each type of resource and eligible energy or RECs generated by early eligible energy resources.

- (X) The total amount of renewable energy or RECs acquired by the QRU during the compliance year pursuant to the SRO program.
- (XI) The total amount of RECs retired by the investor owned QRU during the compliance year pursuant to a voluntary green pricing program.
- (XII) The total amount of RECs sold or traded by the investor owned QRU during the compliance year along with the profit and losses of such transactions and the method for calculating these margins.

- (XIII) Whether the QRU has invested in any eligible energy resource and whether that resource is under construction or in operation.
- (XIV) The funds expended from the RESA account and other revenue sources and the retail rate impact of the eligible energy and RECs acquired by the investor owned QRU. If the investor owned QRU has not acquired sufficient eligible energy and RECs to meet the RES under rule 3654 or the requirements for renewable distributed generation under rule 3655 due to the retail rate impact cap under rule 3661, the retail rate impact cap shall be recalculated based on the actual compliance year values. To the extent the recalculation of the retail rate impact cap demonstrates that additional funds are available based on actual compliance year values, the investor owned QRU shall use those additional funds to acquire RECs, to the extent necessary, to achieve the compliance levels set forth in rules 3654 and 3655 or until the additional funds have been spent if the investor owned QRU intends to claim that the retail rate impact cap prevented it from achieving compliance with the standard.
- (XV) A description of the method used to develop the retail rate impact calculation.
- (XVI) The proposed calculation of on-going annual net incremental costs for eligible energy resources that will come on line prior to the end of the following compliance year that have not been locked down pursuant to an investor owned QRU's compliance plan filing.
- (XVII) The funds advanced by the investor owned QRU during the compliance year, if any, to augment the amounts collected from retail customers through the RESA
- (XVIII) The average hourly incremental cost of electricity during the compliance year, the total number of CSG kWh which were unsubscribed for each CSG during that period, and the total kWh and corresponding billing credits paid to CSG subscribers during the compliance year by each retail

rate class for each CSG.

- (b) In the annual RES compliance report filed by the investor owned or cooperative electric association QRU, the QRU must explain whether it achieved compliance with the RES, including the requirements for retail renewable distributed generation and wholesale renewable distributed generation, as applicable, during the most recently completed compliance year, or explain why the QRU had difficulty meeting the RES or the requirements for retail renewable distributed generation and wholesale renewable distributed generation, as applicable.
- (c) If, in its annual RES compliance report, the investor owned QRU did not comply with its RES as a direct result of absolute limitations within a requirements contract from a wholesale electric supplier, then the QRU must explain whether it acquired a sufficient amount of either eligible RECs or documented and verified energy savings through energy efficiency and/or conservation programs, or both to rectify the noncompliance so as to excuse the investor owned QRU from any administrative fine or other administrative action.
- (d) On the same date that the investor owned or cooperative electric association QRU files its annual RES compliance report, the QRU shall post its annual compliance report excluding confidential material on its website to facilitate public access and review.
- (e) On the same date that the investor owned or cooperative electric association QRU files its annual RES compliance report, if the QRU did not file using the Commission's E-Filings System, it shall provide the Commission with an electronic version of its annual compliance report excluding confidential material. The Commission may place the non-confidential portion of each QRU's annual compliance report on the Commission's website in order to facilitate public review.
- (f) Each qualifying wholesale utility shall submit an annual report to the Commission no later than June 1 of each year. In addition, the qualifying wholesale utility shall post each annual report on its website. In each annual

report, the qualifying wholesale utility shall:

- (I) describe the steps it took during the most recently completed compliance year to comply with the RES of 20 percent of retail sales by 2020 as established in § 40-2-124(8), C.R.S.;
- (II) for the compliance years before 2020, describe whether it is making sufficient progress toward meeting the standard in 2020 or is likely to meet the 2020 standard early. If it is not making sufficient progress toward meeting the standard of 20 percent in 2020, it shall explain why and shall indicate the steps it intends to take to increase the pace of progress; and
- (III) for the 2020 compliance year and each compliance year thereafter, describe whether it has achieved compliance with the RES established in § 40-2-124(8), C.R.S., and whether it anticipates continuing to do so. If it has not achieved such compliance or does not anticipate continuing to do so, it shall explain why and shall indicate the steps it intends to take to meet the standard and by what date.

# Attachment B

**Public Service Company of Colorado**  
**2017 Actual Energy Sales and Resulting RES Compliance Requirements**  
**2017 Renewable Energy Standard Compliance Report**

Calendar Year	Retail Sales (MWhs)	RES <sup>1</sup> (RECs)	RES DG Requirement (RECs)	Retail DG (RECs)	Wholesale (RECs)	Non-DG Requirement (RECs)
2017	28,626,187	5,725,237	500,958	250,479	250,479	5,224,279

**RES Requirements**

**2017**      **20% Retail Sales with 1.75% coming from DG half of which must be Retail DG**

**2017 Forecasted Renewable Energy Standard Compliance Amounts**

Row			Notes	
1	Colorado Retail Electric Sales	28,626,187 MWh		
2	Total RES Requirement	5,725,237 RECs	20% x (1)	
3	DG Requirement	500,958 RECs	1.75% x (1)	1.75%
4	Retail DG RES Requirement	250,479 RECs	50% x (3)	
5	Wholesale DG RES Requirement	250,479 RECs	(3) - (4)	0.88%
6	Non-DG RES Requirement	5,224,279 RECs	(2) - (3)	18.25%

# Attachment C

Attachment C - Renewable Energy Credit Compliance Summary  
Public Service Company of Colorado  
2017 Renewable Energy Standard Report

Row		RECs	REC	Retail	RECs Retired	Total RECs	In-State	Additional	Total RECs	Renewable	RECs	RECs	RECs Carried
		Carried		RECs				Community	Available	Energy	Retired For	Retired For	Forward After
		Forward	Adjustments	Available	for Windsource	REC	Available	REC Bonus	REC Bonus	Standard	2016 RES	2017 RES	2017 RES
		2014-2016 (1)	2011-2016 (2)	2017	2017	Sales	2011-2017	Applied (3)	Applied	2017	Compliance	Compliance	Compliance
	Column Reference	a	b	c	d	e	f	g	h	j	k	l	m
	Calculation						(a + b + c - d - e)	(f x 0.25)					(i - k - l)
1	<b><u>Retail DG Solar Systems</u></b>												
2	Small Customer-Owned (<10 kW)	190,173		110,795			300,968	43,081		344,049		50,086	293,963
3	Small Third Party Developer (<10 kW)	288,648		126,255			414,903	984		415,887		71,494	344,393
4	Medium 1 (10 - 500 kW)	113,016		112,497			225,513	9,433		234,946		79,908	155,038
5	Medium 2 (101 - 500 kW)	-					-	-		-		-	0
6	RFP Large	92,417		48,523			140,940	29,552		170,492		46,296	124,196
7	REC Only	1,499		1,499			2,998			2,998		1,499	1,499
8	SR Community	56,686	1,474	31			58,191	-		58,191		1,196	56,995
9	<b>Total Retail DG Solar</b>	<b>742,439</b>	<b>1,474</b>	<b>399,600</b>	<b>-</b>	<b>-</b>	<b>1,143,513</b>	<b>83,050</b>	<b>-</b>	<b>1,226,563</b>	<b>250,479</b>	<b>-</b>	<b>976,084</b>
10													
11	<b><u>Wholesale DG Solar Systems</u></b>												
12	Power Purchase w/RECs:												
13	SunE Alamosa	25,524	1,042	15,060			41,626	10,407		52,033		10,551	41,482
14	Cameo Solar	-					-	-		-		-	0
15	Cogentrix	178,691		58,937			237,628	59,407		297,035		73,315	223,720
16	Greater Sandhill	119,978		35,499			155,477	38,869		194,346		49,704	144,642
17	San Luis Solar			76,599			76,599	19,150		95,749		95,498	252
18	SunE at SolarTAC		9	-			9	2		11		238	(227)
19	Amonix at SolarTAC	49		-			49	12		61		44	17
20	EPRI at SolarTAC	398		128			526	132		658		85	573
21	<b>Total Wholesale DG Solar</b>	<b>552,550</b>	<b>1,051</b>	<b>186,223</b>	<b>-</b>	<b>-</b>	<b>511,914</b>	<b>127,979</b>	<b>-</b>	<b>639,893</b>	<b>-</b>	<b>229,434</b>	<b>410,459</b>
22													
23	<b><u>Wholesale DG Wind</u></b>												
24	Company Owned Generation												
25	Ponnequin II-VI	103,180		-			103,180	25,795		128,975		76,900	52,075
26	Power Purchase w/RECs:	-					-	-		-		-	0
27	NREL Siemens	181,959		61,149			243,108	60,777		303,885		81,144	222,741
28	Ponnequin I	6,008	211	3			6,222	1,556		7,778		2,721	5,057
29	Ridgecrest	-		-			-	-		-		-	0
30	<b>Total Wholesale DG Wind</b>	<b>150,419</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>150,419</b>	<b>37,605</b>	<b>-</b>	<b>188,024</b>	<b>-</b>	<b>48,121</b>	<b>139,903</b>
31		<b>441,566</b>	<b>211</b>	<b>61,152</b>	<b>-</b>	<b>-</b>	<b>502,929</b>	<b>125,733</b>	<b>-</b>	<b>628,662</b>	<b>-</b>	<b>208,886</b>	<b>419,776</b>
32													
33	<b><u>Wholesale DG Biomass</u></b>												
34	Power Purchase w/RECs:												
35	75th St Digester	-		-			-	-		-		-	0
36	WM Denver/Aurora Disposal Site	60,115		21,266			81,381	20,345		101,726		23,551	78,175
37	<b>Total Wholesale DG Biomass</b>	<b>60,115</b>	<b>-</b>	<b>21,266</b>	<b>-</b>	<b>-</b>	<b>81,381</b>	<b>20,345</b>	<b>-</b>	<b>101,726</b>	<b>-</b>	<b>23,551</b>	<b>78,175</b>
38													
39	<b><u>Wholesale DG Hydropower</u></b>												
40	Company-Owned Generation:												
41	Ames	15,982		8,122			24,104	6,026		30,130		-	30,130
42	Georgetown	14,372		4,824			19,196	4,799		23,995		7,705	16,290
43	Palisade	-					-	-		-		-	0
44	Salida	4,664		2,633			7,297	1,824		9,121		2,683	6,439
45	Shoshone	196,471		88,238			284,709	71,177		355,886		67,634	288,252
46	Tacoma	5,511		13,397			18,908	4,727		23,635		403	23,233
47		-		-			-	-		-		-	0
48	Bridal Veil	-		-			-	-		-		-	0
49	Betasso/Silver Lake/Lakewood	37,508		12,460			49,968	12,492		62,460		16,711	45,749
50	Boulder Canyon	-					-	-		-		-	0
51	Kohler	1,008		-			1,008	252		1,260		406	854
52	Maxwell	543	1	306			850	213		1,063		-	1,063
53	Orodel	376	6	257			639	160		799		-	799
54	Sunshine	5,415		1,143			6,558	1,640		8,198		2,323	5,876
55	Dillon Dam	34,031		6,463			40,494	10,124		50,618		10,480	40,138
56	Foothills	11,528		6,841			18,369	4,592		22,961		-	22,961
57	Hillcrest	8,127		5,519			13,646	3,412		17,058		-	17,058
58	Roberts Tunnel	10,839		16,890			27,729	6,932		34,661		-	34,661
59	Strontia Springs	8,555		4,820			13,375	3,344		16,719		-	16,719
60	Gross Reservoir	57,660		16,417			74,077	18,519		92,596		6,194	86,402
61	Lake George	-		-			-	-		-		-	0
62	Ouray	-		-			-	-		-		-	0
63	Vallecito Dam	-		-			-	-		-		-	0
64	Redlands	22,798		8,046			30,844	7,711		38,555		9,001	29,554



21,338,922
Bonus Eligible

## Compliance

56		Hillcrest	2.30	5,519	0	0	5,519	27%
57		Roberts Tunnel	6.10	16,890	0	0	16,890	32%
58		Strontia Springs	1.20	4,820	0	0	4,820	46%
59		Gross Reservoir	8.10	16,417	0	0	16,417	23%
60		Lake George	-	0	0	0	0	
61		Ouray	-	0	0	0	0	
62		Vallecito Dam	-	0	0	0	0	
63		Redlands	1.40	8,046	0	0	8,046	65%
64		Stagecoach	0.80	0	0	0	0	0%
65		Grand Valley	1.50	4,401	0	0	4,401	33%
66		Orchard Mesa	1.50	4,401	0	0	4,401	33%
67		Mt. Elbert	-	0	0	0	0	
68	Total Wholesale DG Hydropower			228,970	13,679	0	10,113	205,178
69								
70	Total Wholesale DG			516,859	13,679	0	29,361	473,819
71								
72	Non-DG Wind							
73		Cedar Creek	300.50	794,473	0	0	142,267	652,206
74		Cedar Creek II	250.80	696,630	0	0	262,408	434,222
75		Cedar Point	252.00	744,216	0	0		744,216
76		Colorado Green	162.00	443,234	0	0	51,703	391,531
77		Foote Creek III	0.00	0	0	0		0
78		Golden West	249.40	845,952	0	0	27,707	818,245
79		Limon Wind	200.00	707,320	0	0	2,545	704,775
80		Limon Wind II	200.00	606,566	0	0		606,566
81		Limon Wind III	200.60	797,245	0	0	2,851	794,394
82		Logan	201.00	575,625	0	0	62,433	513,192
83		Northern Colorado Wind I	151.80	399,506	0	0		399,506
84		Peetz Table	199.50	603,922	0	0		603,922
85		Spring Canyon	60.00	177,458	0	0		177,458
86		Twin Buttes	75.00	228,098	0	0		228,098
87	Total Non-DG Wind			7,620,245	0	0	551,914	7,068,331
88								
89	Non-DG Solar	Solar Star III	50.00	125,910	0	0	0	125,910
90		Comanche Solar	120.00	285,438			28,657	256,781
91	Total Non-DG Solar			411,348	0	0	28,657	382,691
92								
93	Total Renewable Resources			8,948,052	13,679	0	609,932	8,324,441
94			check(0)	0		0		
95	Notes:							
96								8,324,441
97	(1)	Retail DG solar capacity presented in DC; all other generators presented in AC						399,600
98								2,156,368
99								
100						Final check		0

8,324,441

**Attachment C - Renewable Energy Credit Compliance Summary**  
**Public Service Company of Colorado**  
**2017 Renewable Energy Standard Report**

		RECs Acquired		
		RES Compliance	2017 RES Compliance	Percent
		<u>Plan*</u>	<u>Report</u>	<u>Difference</u>
Column Reference		a	b	c
Calculation				(b-a)/a
Row	<b><u>Renewable Resources</u></b>			
1	<b><u>Retail DG Solar Systems</u></b>	569,420	399,600	<b>-30%</b>
2				
3	<b><u>Wholesale DG Solar Systems</u></b>	202,196	198,694	<b>-2%</b>
4				
5	<b><u>Wholesale DG Wind</u></b>	70,677	66,281	<b>-6%</b>
6				
7	<b><u>Wholesale DG Biomass</u></b>	20,198	22,914	<b>13%</b>
8				
9	<b><u>Wholesale DG Hydro</u></b>	206,548	228,970	<b>11%</b>
10				
11	<b><u>Non-DG Wind</u></b>	7,092,880	7,620,245	<b>7%</b>
12				
13	<b><u>Non-DG Solar</u></b>	449,363	411,348	<b>-8%</b>
14				
15	<b>Total Renewable Resources</b>	8,611,282	8,948,052	<b>4%</b>

Used 2017 RES Compliance Plan Table 4-2 - values in column H

# Attachment D

Attachment D  
Public Service Company of Colorado  
2017 Renewable Energy Standard Compliance Report

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
	Total Renewable Energy Costs					RESA Related Revenues				RESA Related Expenditures		RESA Balance			
	*On-Site Solar Costs	Central Solar Costs	Wind Energy Costs	Other Renewable Energy Costs	Total Renewable Energy Costs	RESA Rider Revenue	Windsorce Revenue	REC Margins	Total RESA Revenue**	Incremental Costs	RESA/ WRGIS/ Windsorce ADM	Annual Excess / (Deficiency)	Interest	Annual Excess / (Deficiency)	Rolling Balance
												Deferred Rolling Balance at December 31, 2016			
Model - 2017	\$29,578,903	\$42,792,428	\$210,445,515	\$0	\$282,816,846	\$58,322,086	\$2,810,940	\$0	\$67,823,487	\$97,706,587	\$864,333	(\$30,747,433)	\$2,297,781	(\$28,449,651)	\$36,188,360
Adjusted Actual \$2,017	\$31,372,700	\$48,860,057	\$202,379,286	\$0	\$282,612,043	\$54,060,438	\$2,894,292	\$11,373,374	\$68,335,953	\$86,859,442	\$989,582	(\$19,513,070)	\$3,853,959	(\$15,659,111)	\$50,625,547
Delta*	(\$1,793,797)	(\$6,067,629)	\$8,066,229	\$0	\$204,803	\$4,261,648	(\$83,352)	(\$11,373,374)	(\$512,466)	\$10,847,145	(\$125,249)	(\$11,234,363)	(\$1,556,178)	(\$12,790,540)	(\$14,437,187)

\*Note: Delta = Modeled minus Adjusted Actual

Onsite Solar	
S*R RECs	\$26,230,463
S*RC - REC	\$1,770,550
S*RCS Tariff	\$3,371,687
Total	\$31,372,700

Solar	
Sunpower	\$6,754,227
Congentrix of Alamosa	\$7,921,583
San Luis Solarq	\$10,625,159
EPRI Solar Tac	\$12,820
Comanche Solar	\$18,030,436
Solar Star	\$5,515,831
Total	\$48,860,057

Wind	
Cedar Creek II	\$37,895,722
Cedar Point Wind, LLC	\$48,008,688
Golden West	\$24,715,817
Limon I	\$22,585,871
Limon II	\$18,670,999
Limon III	\$20,345,740
Northern CO Wind II	\$4,158,825
Northern CO Wind	\$24,396,533
Ridge Crest	\$1,602,611
Siemens Energy, Inc.	(\$1,521)
Total	\$202,379,286

\*Unlocked Resources (Table 7-2(a)).

\*\*Includes Wholesale Customer RESA RJA Credit.

Incremental Costs	
S*R	
Pre-2009 - 2017	\$26,230,463
On-site Avoided	(\$20,946,236)
	\$5,284,227

Incremental Costs	
S*R Community	
S*RC	\$1,770,550
S*RC Sub/Unsubscribed	\$1,796,282
	\$3,566,831

Utility Solar	
Sunpower (Sandhill)	\$4,169,721
SunE Alamosa	\$1,932,627
San Luis	\$6,429,866
SunE Solar TAC	\$35,961
EPRI Solar TAC	\$8,191
Comanche Solar	\$884,889
Solar Star	\$403,646
	\$13,864,901

Wind	
Cedar Point	\$23,236,399
Cedar Creek II	\$18,570,214
Limon I	\$4,028,065
Limon II	\$2,626,581
Limon III	(\$411,169)
NCWI	\$11,577,969
NCWII	\$2,262,780
Ridge	(\$379,223)
Siemens/NREL	\$10,839
Golden West	\$2,621,028
	\$64,143,483

Total	\$86,859,442
-------	--------------

# Attachment E

RES Compliance Report 2017  
Attachment E

				2017	2017	2017
Account number	Technology	Contract	Generator	Total Cost	RESA Cost	ECA Cost
5066001	Hydro	City of Boulder	Betasso/Silverlake	\$ 465,575.86	\$ -	\$ 465,575.86
5066001	Hydro	City of Boulder	Kohler	\$ -	\$ -	\$ -
5066001	Hydro	City of Boulder	Maxwell	\$ (547.49)	\$ -	\$ (547.49)
5066001	Hydro	City of Boulder	Orodel	\$ 8,425.49	\$ -	\$ 8,425.49
5066001	Hydro	City of Boulder	Sunshine	\$ 42,517.07	\$ -	\$ 42,517.07
5066001	Hydro	Denver Water Board	Dillon Dam	\$ 304,429.76	\$ -	\$ 304,429.76
5066001	Hydro	Denver Water Board	Foothills	\$ 175,975.04	\$ -	\$ 175,975.04
5066001	Hydro	Denver Water Board	Gross Reservoir	\$ 456,374.31	\$ -	\$ 456,374.31
5066001	Hydro	Denver Water Board	Hillcrest	\$ 155,981.14	\$ -	\$ 155,981.14
5066001	Hydro	Denver Water Board	Roberts Tunnel	\$ 480,291.60	\$ -	\$ 480,291.60
5066001	Hydro	Denver Water Board	Strontia Springs	\$ 157,702.59	\$ -	\$ 157,702.59
5066001	Hydro	Grand Valley Water Users Association	Grand Valley Water Users Association	\$ 176,011.12	\$ -	\$ 176,011.12
5066001	Hydro	Orchard Mesa Irrigation District	Orchard Mesa Irrigation District	\$ 176,011.12	\$ -	\$ 176,011.12
5066001	Hydro	Redlands Water & Powr Company	Redlands Water & Powr Company	\$ 251,142.70	\$ -	\$ 251,142.70
5066001	Hydro	STS Hydropower, LTD.	STS - Mt. Elbert	\$ 145,299.86	\$ -	\$ 145,299.86
5066001	Hydro	Ute Hydro	Ute Hydro	\$ 44,022.06	\$ -	\$ 44,022.06
5066001	Biomass/LT	WM Renewable Energy, LLC	WM Renewable Energy, LLC	\$ 1,393,873.15	\$ -	\$ 1,393,873.15
				<b>\$ 4,433,085.38</b>	<b>\$ -</b>	<b>\$ 4,433,085.38</b>
5070001	Solar	Sunpower	SNDHL	\$ 6,754,227.39	\$ 4,169,721.00	\$ 2,584,506.39
5070001	Solar	Miscellaneous Retail Solar Purchases	Miscellaneous Retail Solar Purchases	\$ 331,647.60	\$ -	\$ 331,647.60
5070001	Solar	Solar Gardens subscribed/Unsubscribed	Solar Gardens subscribed/Unsubscribed	\$ 3,371,686.98	\$ 1,796,281.76	\$ 1,575,405.22
5070001	Solar	Cogentrix of Alamosa	Cogentrix of Ala	\$ 7,921,583.05	\$ -	\$ 7,921,583.05
5070001	Solar	San Luis Solar LLC	San Luis Solar LLC	\$ 10,625,159.36	\$ 6,429,865.63	\$ 4,195,293.73
5070001	Solar	SunEAlamosa	SunEAlamosa	\$ 3,366,803.57	\$ 1,932,627.00	\$ 1,434,176.57
5070001	Solar	EPRI Solar Tac	EPRI Solar Tac	\$ 12,819.72	\$ 8,191.00	\$ 4,628.72
5070001	Solar	Comanche Solar PV, LLC	Comanche Solar PV, LLC	\$ 18,030,436.48	\$ 884,889.00	\$ 17,145,547.48
5070001	Solar	Solar Star	Solar Star	\$ 5,515,831.16	\$ 403,646.00	\$ 5,112,185.16
5070001	Solar	SunEdison LLC	SunEdison LLC	\$ -	\$ 35,961.00	\$ (35,961.00)
Total Solar				<b>\$ 55,930,195.31</b>	<b>\$ 15,661,182.39</b>	<b>\$ 40,269,012.92</b>
5069001/5069006	Wind	Alstom Power Inc	Alstom Power Inc	\$ 9,237.96	\$ -	\$ 9,237.96
5069001/5069006	Wind	Cedar Creek	CdrCrk	\$ 38,707,780.46	\$ -	\$ 38,707,780.46
5069001/5069006	Wind	Cedar Creek II	Cedar Creek II	\$ 37,895,722.48	\$ 18,570,214.00	\$ 19,325,508.48
5069001/5069006	Wind	Cedar Point Wind, LLC	Cedar Point Wind, LLC	\$ 48,008,688.00	\$ 23,236,399.00	\$ 24,772,289.00
5069001/5069006	Wind	Gamesa Wind US, LLC	Gamesa Wind US, LLC	\$ 4,794.01	\$ -	\$ 4,794.01
5069001/5069006	Wind	Golden West Power Partners	Golden West Power Partners	\$ 24,715,816.68	\$ 2,621,028.00	\$ 22,094,788.68
5069001/5069006	Wind	Limon I	Limon I	\$ 22,585,870.76	\$ 4,028,065.00	\$ 18,557,805.76
5069001/5069006	Wind	Limon II	Limon II	\$ 18,670,999.46	\$ 2,626,581.00	\$ 16,044,418.46
5069001/5069006	Wind	Limon III	Limon III	\$ 20,345,740.17	\$ (411,169.00)	\$ 20,756,909.17
5069001/5069006	Wind	Logan	Logan	\$ 28,016,248.43	\$ -	\$ 28,016,248.43
5069001/5069006	Wind	National Renewable Energy Laboratory	National Renewable Energy Laboratory	\$ 31,688.84	\$ -	\$ 31,688.84
5069001/5069006	Wind	Northern CO Wind Energy II	NCoWndII	\$ 4,158,825.30	\$ 2,262,780.00	\$ 1,896,045.30
5069001/5069006	Wind	Northern Colorado Wind Farm	NCoWnd	\$ 24,396,533.12	\$ 11,577,969.00	\$ 12,818,564.12
5069001/5069006	Wind	PacifiCorp	COLOGREEN	\$ 18,812,045.22	\$ -	\$ 18,812,045.22
5069001/5069006	Wind	Peetz Table	Peetz Table	\$ 29,065,470.04	\$ -	\$ 29,065,470.04
5069001/5069006	Wind	Ridge Crest Wind Partners, LLC	RIDGECREST	\$ 1,602,610.87	\$ (379,223.00)	\$ 1,981,833.87
5069001/5069006	Wind	Siemens Energy, Inc.	Siemens Energy, Inc.	\$ (1,521.14)	\$ 10,839.00	\$ (12,360.14)
5069001/5069006	Wind	Spring Canyon Energy LLC (Invenergy)	SprCanWind	\$ 6,730,604.58	\$ -	\$ 6,730,604.58
5069001/5069006	Wind	Twin Buttes	TWNBTS	\$ 10,916,295.85	\$ -	\$ 10,916,295.85
5069001/5069006	Wind	Transfers for the Trading Book		\$ 171,112.14	\$ -	\$ 171,112.14
				<b>\$ 334,844,563.23</b>	<b>\$ 64,143,483.00</b>	<b>\$ 270,701,080.23</b>
Total				<b>\$ 395,207,843.92</b>	<b>\$ 79,804,665.39</b>	<b>\$ 315,403,178.53</b>
Onsite	Avoided Costs			\$ -	\$ (20,946,236.44)	\$ 20,946,236.44
Total Incremental Costs				<b>\$ 395,207,843.92</b>	<b>\$ 58,858,428.95</b>	<b>\$ 336,349,414.97</b>
Onsite	Common to All Programs			\$ -	\$ -	\$ -
Onsite	Customer Sited Solar < 10 kW			\$ 9,367,547.40	\$ 9,367,547.40	\$ -
Onsite	Customer Sited Solar >10 kW -500 kW			\$ 9,310,900.08	\$ 9,310,900.08	\$ -
Onsite	Customer Sited Solar Large RFP			\$ 7,552,015.70	\$ 7,552,015.70	\$ -
Onsite	Small 3rd Party Developer			\$ -	\$ -	\$ -
Onsite	Non-Customer Sited Solar			\$ -	\$ -	\$ -
Onsite	Wholesale Costs			\$ -	\$ -	\$ -
Onsite	Solar Gardens 10-50kW			\$ 1,770,549.77	\$ 1,770,549.77	\$ -
Onsite	Solar Gardens 50.01 - 500 kW			\$ -	\$ -	\$ -
Onsite	Solar Gardens 500.01 - kW - 2MW			\$ -	\$ -	\$ -
Total Other RESA Expense				<b>\$ 28,001,012.95</b>	<b>\$ 28,001,012.95</b>	\$ -
					<b>\$ 86,859,441.90</b>	<b>\$ 336,349,414.97</b>

2017 Average Hourly Incremental Cost (AHIC) was \$0.01355 per kWh.  
Solar Rewards Community volumes purchased at the AHIC in 2016 was 167,349.56 kWh.



# Attachment F

## **I. INTRODUCTION**

In Commission Decision No. C11-1080 approving the Company's 2010 RES Compliance Plan, the Company was directed to provide in its future RES compliance plan reports a comparison between the forecasted and the actual RESA incremental costs of eligible energy resources assessed against the Renewable Energy Standard Adjustment ("RESA") deferred account. The Company was also directed to explain any significant deviations between the Company's modeled and actual RESA incremental costs. This Attachment F is being provided in compliance with this requirement. In Proceeding No. 13AL-816E the Commission approved certain ECA/RESA transfers. The tables attached to this 2017 RES Report reflect the Commission holdings in that proceeding.

Two attachments to this report provide the support for this Attachment F: Attachment D and Attachment E. Attachment D of this report generally presents the differences between the forecasted incremental costs set forth in Table 7-2(a), (b) and (c) in the 2017 Plan as filed by Company witness Robin L. Kittel in Direct Testimony, Attachment RLK-2, and the actual RESA incremental costs. Attachment D is a RESA cost view only; it shows the total incremental costs of all eligible energy resources that are charged to the RESA deferred account.

Attachment E of this report shows the total costs of all renewable resources allocated between the ECA and the RESA as required by Decision Nos. R12-0261 and C12-0606.

## **II. Analysis**

The Company performs modeling according to Rule 3661 to determine the amount of costs for eligible energy resources to be allocated between the ECA deferred account and the RESA deferred account.

### **A. Rule 3661, RESA and ECA Accounting and Monthly RESA Reports**

In accordance with Rule 3661, the RESA is only charged the incremental costs of the eligible energy resources on our system installed after July 2, 2006. Rule 3661 details the architecture for how we are to use our computer models to determine the difference in costs between two alternative scenarios of electric resources. The first scenario ("RES Plan") includes the eligible energy resources we propose to acquire. The second scenario (the "No RES Plan") removes the eligible energy resources we propose to acquire and replaces them with those reasonably available non-renewable resources necessary to replace the eligible energy resources so that the Company can meet its capacity and energy requirements. The cost difference between these two model runs equals the incremental costs of the renewable energy we propose to acquire. These incremental costs are allocated to the RESA. The costs calculated as part of the No RES model run are considered "Avoided Energy Costs" and are allocated to the ECA. These costs are considered "avoided" because our acquisition of generation produced from eligible energy resources permits us to avoid, to some extent, acquiring generation from new non-renewable resources, such as additional gas-fired capacity (either combustion

turbine or combined cycle generation), and/or re-dispatching existing resources to satisfy the energy needs of the system.

The process outlined above generally describes the manner in which the costs of energy -- including the incremental costs of eligible energy resources -- are calculated and the accounts to which those costs are ultimately charged. However, the accounting process used to ensure that the proper costs are allocated between the RESA and the ECA is described in detail under the 2017 Plan Volume I Section 8 and is incorporated into this Attachment F by reference.

Each month the Company submits to the Commission a “Monthly RESA Report” that is filed under Proceeding No. 06S-016E. The Monthly RESA Report sets forth, among other things, all of the incremental costs for eligible energy resources that are charged to the RESA. These incremental costs charged to the RESA are set forth within the “Summary” tab of the Monthly RESA Report. The monthly “Incremental Costs” of the eligible energy resources acquired under the Solar\*Rewards® programs (including Solar\*Rewards Community) are set forth under the heading “Expenditure by Type”.

The Solar\*Rewards® (including Solar\*Rewards Community) portion of the Monthly RESA Report also specifies the total -- not just incremental -- costs of each Solar\*Rewards® program by program size. The total costs are the annual REC costs for the entire Solar\*Rewards® program. These total costs are set forth in the Monthly RESA Report both in the “Summary” Tab and as detailed in separate Tabs for the small, medium and large programs.

### **III. Variance Between Forecast and Actual RESA Costs in Attachment D**

The below comparisons of forecasted, or modeled, costs to actual costs are based upon the updated costs presented in Attachment RLK-2. The Company believes that a delta of \$1 million or more requires an explanation for reporting purposes. All detailed calculations for resources comparing forecasted costs to actual costs by category are provided in Attachment D.

#### **A. Column A – On-Site Solar Costs**

Column A labeled New On-Site Solar Costs reflects a difference in costs of \$29.6 million forecasted vs. \$31.4 million actual resulting in a total difference of \$1.8 million. This variance is attributable to greater participation in the Company's Solar\*Rewards and Solar\*Rewards Community programs than was originally modeled.

#### **B. Column B – Central Solar Costs**

Column B labeled New Central Solar Costs reflects a difference in costs of \$42.8 forecasted vs. \$48.9 million actual resulting in a total difference of \$6.1 million. This variance is attributable to the omission of Congentrix of Alamosa from modeling.

#### **C. Column C – Wind Energy Costs**

Column C labeled Wind Energy Costs reflects a difference in costs of \$210.4 million forecasted vs. \$202.4 million actual resulting in a total difference of \$8.1 million. This variance is largely attributable to higher assumed production for Cedar Creek II (\$2.8 million) and Golden West (\$4.85 million) that were used in modeling as compared to actual production.

**D. Column F – RESA Rider Revenue**

Column F labeled RESA Rider Revenue reflects difference in revenues of \$58.3 million forecasted vs. \$54.1 million actual, resulting in a total difference of \$4.3 million. The variance simply reflects lower RESA Revenue than what was forecasted for 2017.

**E. Column H – REC Margins**

Column H labeled REC Margins reflect the customers' share of the margins generated from the selling of RECs. The \$11.4 million variance simply reflects the fact that no REC sales were projected for 2017 when in fact the Company did have the opportunity to sell RECs.

**F. Column J - Incremental Costs**

Column J reflects the RESA incremental costs associated with the acquisition of new renewable resources and/or resources not otherwise locked down. Column J includes the RESA share of the costs for new renewable energy resources including on-site solar, central solar and wind resources. We originally forecast that these incremental costs would total \$97.7 million in 2017, which includes Solar\*Rewards

Community REC payments. The actual costs for Column J are \$86.9 million for 2017 resulting in a difference of \$10.8 million.

The variance is attributable to modeled incremental system costs for both solar and wind resources with higher assumed production than actual production.

**G. Column L - Annual Excess or Deficiency**

Column L labeled Annual Deficiency reflects the actual and forecasted amounts of the annual deficiency in the RESA balance. The actual annual deficiency in 2017 was negative \$19.5 million meaning there were less revenues than costs being applied to the account. This is reflected by the difference between Column I - Total RESA Revenues minus Columns J and K (RESA Related Expenditures).

**H. Column O – Annual Excess or Deficiency**

The total shown on Attachment D reflects the cumulative effect of the actual costs as compared to the forecasted costs along with the interest component which include all associated variances previously described.

**I. Column P - Rolling Balance**

The Rolling Balance is the culmination of the 2017 year end RESA balance plus the annual excess or deficiency with interests. The variance is reflective of those described above for Column L.

# Attachment G



Public Service Company of Colorado  
 Cumulative Solar Rewards RFP Bidder List  
 2017 Renewable Energy Standard Report

Solicitation	Capacity Award Recipient	Current Garden Owner	Garden Street or Lat/Long	Garden City	Garden Zip Code	County	Name Plate Capacity (kW DC)	Operational
2012 Standard Offer (SO) RFP	Clean Energy Collective	Clean Energy Collective	5050 N Telluride	Denver	80239	DENVER	499.17	Y
	Clean Energy Collective	Clean Energy Collective	7581 E Academy Blvd.	Denver	80230	DENVER	400.075	Y
	Clean Energy Collective	Clean Energy Collective	21560 W 56th Ave. Unit B	Golden	80403	JEFFERSON	115.15	Y
	Clean Energy Collective	Clean Energy Collective	1600 66th St	Boulder	80303	BOULDER	496.455	Y
	Clean Energy Collective	Clean Energy Collective	710 Wellington Rd	Breckenridge	80424	SUMMIT	497.965	Y
	Clean Energy Collective	Clean Energy Collective	12920 CO Highway 9	Breckenridge	80424	SUMMIT	499.515	Y
	Clean Energy Collective	Clean Energy Collective	790 Tower Road	Aurora	80012	ARAPAHOE	497.965	Y
	Community Energy Solar	Community Energy Solar	760 East County Line Road	Lafayette	80026	BOULDER	498.3	Y
	Clean Energy Collective	Clean Energy Collective	790 N. Tower Rd.	Aurora	80011	ARAPAHOE	500	Y
	Community Energy Solar	Community Energy Solar	710 East County Line Road	Lafayette	80026	BOULDER	498.3	Y
2013 SO RFP	Clean Energy Collective	Clean Energy Collective	21560 W 56th Ave. Unit A	Golden	80007	JEFFERSON	569.17	Y
	Ecoplexus	Fresh Air Energy	2930 D 1/4 Road	Grand Junction	81594	MESA	1999.8	Y
	SunShare	SunShare	31481 E County Road 18 (Jewell)	Watkins	80137	ARAPAHOE	499.3	Y
	SunShare	SunShare	17797 E 5157 AVE	Denver	80249	DENVER	499.4	Y
	SunShare	SunShare	17897 E 5157 AVE	Denver	80249	DENVER	499.4	Y
	SunShare	SunShare	5061 1/2 Imboden Rd	Watkins	80137	ADAMS	497.2	Y
	Clean Energy Collective	Clean Energy Collective	5050 N Telluride	Denver	80010	DENVER	497.35	Y
	Clean Energy Collective	Clean Energy Collective	1600 S. 66th St	Boulder	80301	BOULDER	499.9	Y
	Clean Energy Collective	Clean Energy Collective	987 5th St SW	Leadville	80461	LAKE	499.9	Y
	SunShare	SunShare	5051 1/2 Imboden Rd	Watkins	80137	ADAMS	497.2	Y
2013 RFP	Community Energy Solar	Community Energy Solar	106 E. 1st Avenue	Antonito	81120	CONJOS	500	Y
	SunShare	NRG	9105 Alkire Street	Arvada	80005	JEFFERSON	1496.88	Y
	SunShare	NRG	5011 1/2 Imboden Rd	Watkins	80137	ADAMS	1499.4	Y
	SunShare	NRG	4976 1/2 Imboden Rd	Watkins	80137	ADAMS	1496.1	Y
	Clean Energy Collective	Clean Focus Renewables	13727 US 285	La Jara	81140	CONJOS	1987.2	Y
	Clean Energy Collective	Clean Focus Renewables	28010 E. Quincy Ave.	Arvada	80138	ARAPAHOE	1984.5	Y
	Clean Energy Collective	Clean Focus Renewables	33850 E 38th Ave	Watkins	80137	ADAMS	1984.5	Y
	Clean Energy Collective	Clean Focus Renewables	12010 HWY 61	Sterling	80751	LOGAN	1987.2	Y
	Clean Energy Collective	Clean Focus Renewables	5260 Imboden Rd.	Watkins	80137	ADAMS	1987.2	Y
	Clean Energy Collective	Clean Focus Renewables	15990 CR 29	Platteville	80651	WELD	1984.5	Y
2015 RFP	SunShare	SunShare	5137 Imboden Rd Unit B	Watkins	80137	ADAMS	1995	N
	SunShare	SunShare	37051 E. County Road 10	Watkins	80136	ARAPAHOE	1999.5	N
	SunShare	AEP	28102 E. Quincy Ave Unit 2	Aurora	80138	ARAPAHOE	1999.5	N
	SunShare	AEP	33975 E. 48th Ave.	Watkins	80137	ADAMS	1999.5	N
	SunShare	AEP	5135 Imboden Road Unit A	Watkins	80137	ADAMS	1999.5	N
	SunShare	SunShare	14228 County Road 42	Gilcrest	80623	WELD	1999.5	N
	SunShare	SunShare	5900 Hudson Road	Watkins	80137	ADAMS	1999.5	N
	SunShare	SunShare	5135 Imboden Rd. Unit B	Watkins	80137	ADAMS	1999.5	N
	Community Energy Solar	Community Energy Solar	37980 State Highway 17	Antonito	81120	CONJOS	1500	Y
	Microgrid	Microgrid Energy	2500 Lawrence	Denver	80205	DENVER	69.02	N
2015 SO (billed in 2016)	Microgrid	Microgrid Energy	2501 Dallas St	Aurora	80010	ADAMS	100	N
	SET Ventures Group	SET Ventures Group	2500 Plaza Dr	Littleton	80129	DOUGLAS	99.6	N
	Microgrid	Microgrid Energy	2500 Lawrence St.	Denver	80205	DENVER	69.7	N
	Microgrid	Microgrid Energy	540 Parachute Ave	Parachute	81635	GARFIELD	100	N
	Community Energy Solar	Community Energy Solar	1385 Horizon Ave	Lafayette	80026	BOULDER	2000	N
	Community Energy Solar	Community Energy Solar	28614 Highway 159	Fort Garland	81133	COSTILLA	2000	N
	Community Energy Solar	Community Energy Solar	285 S Co. Rd 3 E	Monte Vista	81144	RIO GRANDE	2000	N
	Community Energy Solar	Community Energy Solar	283 S Co. Rd 3 E	Monte Vista	81144	RIO GRANDE	2000	N
	Microgrid	Microgrid Energy	345001 56th Ave	Watkins	80137	DENVER	1000	N
	Microgrid	Microgrid Energy	17291 Green Valley Ranch Blvd	Denver	80239	DENVER	1000	N
2016 RFP	Microgrid	Microgrid Energy	3411 C RD	Palmside	81526	MESA	2000	N
	Community Energy Solar	Community Energy Solar	8428 Road 10 South	Alamosa	81101	ALAMOSA	2000	N
	Community Energy Solar	Community Energy Solar	8054 Road 10 South	Alamosa	81101	ALAMOSA	2000	N
	OAK	OAK	2950-A North Hudson Road	Watkins	81137	DENVER	1996	Y
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	8545 Ironfield Road	Alamosa	81101	ALAMOSA	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	29100 B E County Road 30/Quincy Avenue	Watkins	80137	ARAPAHOE	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	27400 E 114th Ave	Denver	80249	DENVER	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	5900 Hudson Road	Watkins	80137	ADAMS	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	36585 B E. COUNTY ROAD 30/E. QUINCY AVE.	Watkins	80137	ARAPAHOE	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	39299 E. County Road 30/Quincy Avenue	Watkins	80137	ARAPAHOE	1997.1	N
2017 LI RFP	Oak Leaf Energy Partners	Oak Leaf Energy Partners	27905 E 112th Ave	Denver	80249	DENVER	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	2451 E. 8th St.	Greeley	80631	WELD	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	14684 County Road 36	Platteville	80651	WELD	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	17461 County Road 25, Unit 1	Platteville	80651	WELD	1184	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	2585 W. Centennial Parkway	Rifle	81650	GARFIELD	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	10752 County Road 140	Salida	81201	CHAFFEE	1997.1	N
	Oak Leaf Energy Partners	Oak Leaf Energy Partners	956 Highline Canal Rd	Cameo	81526	MESA	1997.1	N
	Microgrid	Microgrid Energy	3857 Puerta Vista Ct.	Palmside	81526	MESA	2000	N
	Native Suns	Native Suns	17396 state hwy 93	Morrison	80465	JEFFERSON	1000	N
	Native Suns	Native Suns	3201 West 32nd Avenue	Golden	80401	JEFFERSON	2000	N
2017 LI SO	Community Energy Solar	Community Energy Solar	29050 E Quincy Ave	Watkins	80137	ARAPAHOE	2000	N
	Community Energy Solar	Community Energy Solar	29050 E Quincy Ave	Alden	80631	WELD	2000	N
	Community Energy Solar	Community Energy Solar	15990 County Road 31	Weld	80651	WELD	1500	N
	Community Energy Solar	Community Energy Solar	7735 US-285	Salida	81201	CHAFFEE	2000	N
	Community Energy Solar	Community Energy Solar	13148 US Hwy 285	Romeo	81140	CONJOS	2000	N
	Community Energy Solar	Community Energy Solar	400 20th St.	Alamosa	81101	ALAMOSA	2000	N
	Microgrid	Microgrid Energy	5000 Imboden Road	Watkins	80137	ADAMS	2000	N
	Microgrid	Microgrid Energy	34500 E 56th Ave	Watkins	80137	ADAMS	1000	N
	Microgrid	Microgrid Energy	31145 US 6	Silt	81652	GARFIELD	1000	N
	Grid Alternatives	Grid Alternatives	1720 S Marshall Rd.	Boulder	80305	BOULDER	100	N
2017 LI SO	Grid Alternatives	Grid Alternatives	5 W 51st Ave.	Denver	80216	DENVER	90	N
	Sandbox Solar	Sandbox Solar	131 North 35th Ave	Greeley	80634	WELD	100	N
	Grid Alternatives	Grid Alternatives	14230 County Road 36	Platteville	80651	WELD	90	N
	Grid Alternatives	Grid Alternatives	1915 Airport Road	Breckenridge	80424	SUMMIT	90	N
	Grid Alternatives	Grid Alternatives	1 S 66th Street	Louisville	80301	BOULDER	90	N
	Grid Alternatives	Grid Alternatives						

# Attachment H

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

This Agreement is made and entered into this 17 day of March, 2017, 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 CEC Solar #1119, LLC ("SRC Producer"), a Colorado LLC, whose business address is 361 Centennial Pkwy, Suite 300 Louisville, CO 80027, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

**RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1988.1 kW.

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

**ARTICLE I**  
**DEFINITIONS**

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

1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.

1.2. "Common Ownership" shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.3. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.4. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II**

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

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

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

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

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

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

One-time REC payment

2.3 Price and Payment. Public Service shall make a one-time payment to SRC Producer of \$\_\_\_\_\_. Such payment shall be made by check to the SRC Producer issued within thirty (30) days after the Date of Commercial Operation.

Negative Bid Price

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

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

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

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

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

### **ARTICLE III**

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

3.1 SRC Producer represents and warrants as follows:

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

9/12/2016



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

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

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

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

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

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

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

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

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

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

(e) At least 5 percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE V**

### **PRODUCTION METER AND INTERCONNECTION**

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

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

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

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

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

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

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



**ARTICLE VI**  
**FORCE MAJEURE**

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

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

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

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

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

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

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

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

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

(A) PV System Owner, SRC Producer and their affiliated and parent companies failure at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

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

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

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

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

**ARTICLE IX**  
**LAWS AND REGULATORY BODIES**

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

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

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

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

**ARTICLE X**  
**MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

If to Public Service:

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

If to SRC Producer:

CEC Solar #1119, LLC  
361 Centennial Pkwy, Suite 300  
Louisville, CO 80027

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

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

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

**SRC Producer**

CEC Solar #1119, LLC

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

**SRC Producer Representative:** Paul Spencer \_\_\_\_\_

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

**SRC Producer Signature:**  \_\_\_\_\_ **Date:** 03/17/2017

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

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

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

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

As authorized agent for  
Public Service Company of Colorado

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

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

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

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

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

9/12/2016

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

**SRC Producer**

CEC Solar #1119, LLC

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

**SRC Producer Representative:** Paul Spencer

**Title:** CEO

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

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

**By:** Lee Gabler  
**Title:** \_\_\_\_\_

Digitally signed by Lee Gabler  
DN: cn=Lee Gabler, ou=Customer Solutions, email=lee.gabler@xcelenergy.com, c=US  
Date: 2017.03.17 13:46:51 -0500

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

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

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

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

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

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

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

9/12/2016



**Exhibit A**  
**to**  
**Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

13727 US 285  
La Jara, CO 81140

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SRC SUBSCRIBER**

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

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

**SRC PRODUCER**

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

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

## Exhibit C

### to

## Construction Milestones

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have 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 shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months of receiving an award.

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

This Agreement is made and entered into this 17 day of March, 2017, 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 CEC Solar #1121, LLC (“SRC Producer”), a Colorado LLC, whose business address is 361 Centennial Pkwy, Suite 300 Louisville, CO 80027, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

**RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1984.5 kW.

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

**ARTICLE I**  
**DEFINITIONS**

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

1.1. “Commission” shall mean the Public Utilities Commission of the State of Colorado.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

## **ARTICLE II**

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

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

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

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

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

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

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

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

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

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

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

### **ARTICLE III**

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

3.1 SRC Producer represents and warrants as follows:

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

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

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

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

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

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

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

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

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

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

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

(e) At least 5 percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## **ARTICLE V**

### **PRODUCTION METER AND INTERCONNECTION**

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

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

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

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

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

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

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

## **ARTICLE VI**

### **FORCE MAJEURE**

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

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

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

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

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

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

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

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

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

(A) PV System Owner, SRC Producer and their affiliated and parent companies failure at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

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

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

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

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

## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

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

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

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

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

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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



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

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

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

If to Public Service:

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

If to SRC Producer:

CEC Solar #1121, LLC  
361 Centennial Pkwy, Suite 300  
Louisville, CO 80027

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

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

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

**SRC Producer**

**SRC Producer Name (printed):** CEC Solar #1121, LLC \_\_\_\_\_

**SRC Producer Representative:** Paul Spencer \_\_\_\_\_

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

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

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

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

**Date:** \_\_\_\_\_.

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

As authorized agent for  
Public Service Company of Colorado

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

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

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

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

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

**Exhibit A**  
**to**  
**Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

28102 East Quincy Avenue  
Aurora, CO 80138

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SRC SUBSCRIBER**

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

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

**SRC PRODUCER**

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

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

## Exhibit C to Construction Milestones

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have 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 shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months of receiving an award.

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

This Agreement is made and entered into this 17 day of March, 2017, 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 CEC Solar #1122, LLC ("SRC Producer"), a Colorado LLC, whose business address is 361 Centennial Pkwy, Suite 300 Louisville, CO 80027, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

**RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1984.5 kW.

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

**ARTICLE I**  
**DEFINITIONS**

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

1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.

1.2. "Common Ownership" shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.3. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.4. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II**

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

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

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

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

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

2.3 Price and Payment. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer the price of 30.00 per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

One-time REC payment

2.3 Price and Payment. Public Service shall make a one-time payment to SRC Producer of \$ \_\_\_\_\_. Such payment shall be made by check to the SRC Producer issued within thirty (30) days after the Date of Commercial Operation.

Negative Bid Price

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

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

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

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

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

### **ARTICLE III**

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

3.1 SRC Producer represents and warrants as follows:

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

9/12/2016

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

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

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

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

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

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

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

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

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

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

(e) At least 5 percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE V**

### **PRODUCTION METER AND INTERCONNECTION**

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

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

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

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

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

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

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

**ARTICLE VI**  
**FORCE MAJEURE**

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

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

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

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

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

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

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

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

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

(A) PV System Owner, SRC Producer and their affiliated and parent companies failure at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

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

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 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.

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.

## ARTICLE VIII LIABILITY AND INDEMNIFICATION

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

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



## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

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

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

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

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

**ARTICLE X**  
**MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

If to Public Service:

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

If to SRC Producer:

CEC Solar #1122, LLC  
361 Centennial Pkwy, Suite 300  
Louisville, CO 80027

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

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

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

**SRC Producer**

CEC Solar #1122, LLC

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

**SRC Producer Representative:** Paul Spencer \_\_\_\_\_

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

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

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

**By:** Lee Gabler  
Digitally signed by Lee Gabler  
DN: cn=Lee Gabler, o=Customer Solutions,  
ou=Sr Director, Customer Strategy and  
Solutions,  
email=lee.gabler@xcelenergy.com, c=US  
Date: 2017.03.17 13:46:12 -0500  
**Title:** \_\_\_\_\_

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

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

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

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

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

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

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

9/12/2016

**Exhibit A**  
**to**  
**Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

33850 E. 38th Ave  
Watkins, CO 80137

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

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

SRC Subscriber Name: \_\_\_\_\_  
SRC Subscriber Retail Customer Account No.: \_\_\_\_\_  
SRC Subscriber Service Address: \_\_\_\_\_  
\_\_\_\_\_  
SRC Subscriber E-mail Address: \_\_\_\_\_  
SRC Subscriber Mailing Address: \_\_\_\_\_  
SRC Subscriber Telephone No: \_\_\_\_\_ (Primary) \_\_\_\_\_ (Alt.)  
SRC Producer (Subscriber Organization) Name: \_\_\_\_\_  
Solar Garden ID No: \_\_\_\_\_  
Name and Location of Solar Garden: \_\_\_\_\_  
\_\_\_\_\_  
SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_ kW

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

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

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

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

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

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

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

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

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

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

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

**SRC SUBSCRIBER**

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

**SRC PRODUCER**

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



## Exhibit C to Construction Milestones

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have 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 shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months of receiving an award.

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

This Agreement is made and entered into this 17 day of March, 2017, 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 CEC Solar #1128, LLC ("SRC Producer"), a Colorado LLC, whose business address is 361 Centennial Pkwy, Suite 300 Louisville, CO 80027, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

**RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1988.1 kW.

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

**ARTICLE I**  
**DEFINITIONS**

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

1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.

1.2. "Common Ownership" shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.3. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.4. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II**

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

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

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

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

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

2.3 Price and Payment. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer the price of 30.00 per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

One-time REC payment

2.3 Price and Payment. Public Service shall make a one-time payment to SRC Producer of \$\_\_\_\_\_. Such payment shall be made by check to the SRC Producer issued within thirty (30) days after the Date of Commercial Operation.

Negative Bid Price

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

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

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

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

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

### **ARTICLE III**

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

3.1 SRC Producer represents and warrants as follows:

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

9/12/2016

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

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

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

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

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

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

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

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



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

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

(e) At least 5 percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE V**

### **PRODUCTION METER AND INTERCONNECTION**

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

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

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

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

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

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

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

## **ARTICLE VI**

### **FORCE MAJEURE**

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

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

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

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



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

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

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

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

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

(A) PV System Owner, SRC Producer and their affiliated and parent companies failure at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

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

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

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

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

## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

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

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

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

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

**ARTICLE X**  
**MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

If to Public Service:

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

If to SRC Producer:

CEC Solar #1128, LLC  
361 Centennial Pkwy, Suite 300  
Louisville, CO 80027

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

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

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

**SRC Producer**

CEC Solar #1128, LLC

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

**SRC Producer Representative:** Paul Spencer \_\_\_\_\_

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

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

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

**By:** Lee Gabler \_\_\_\_\_  
**Title:** \_\_\_\_\_

Digitally signed by Lee Gabler  
DN: cn=Lee Gabler, o=Customer Solutions, email=lee.gabler@xcelenergy.com, c=US  
Date: 2017.03.17 13:46:49 -0500

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

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

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

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

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

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

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

9/12/2016

**Exhibit A**  
**to**  
**Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

12010 Hwy 61  
Sterling, CO 80751

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SRC SUBSCRIBER**

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

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

**SRC PRODUCER**

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

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

## Exhibit C to Construction Milestones

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have 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 shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months of receiving an award.

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

This Agreement is made and entered into this 17 day of March, 2017, 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 CEC Solar #1130, LLC ("SRC Producer"), a Colorado LLC, whose business address is 361 Centennial Pkwy, Suite 300 Louisville, CO 80027, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

**RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1988.1 kW.

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

**ARTICLE I**  
**DEFINITIONS**

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

1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.

1.2. "Common Ownership" shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.3. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.4. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II**

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

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

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

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

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

2.3 Price and Payment. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer the price of 30.40 per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

One-time REC payment

2.3 Price and Payment. Public Service shall make a one-time payment to SRC Producer of \$\_\_\_\_\_. Such payment shall be made by check to the SRC Producer issued within thirty (30) days after the Date of Commercial Operation.

Negative Bid Price

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

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



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

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

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

### **ARTICLE III**

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

3.1 SRC Producer represents and warrants as follows:

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

9/12/2016

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

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

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

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

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

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

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

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

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

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

(e) At least 5 percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE V**

### **PRODUCTION METER AND INTERCONNECTION**

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

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

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

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



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

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

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

## **ARTICLE VI**

### **FORCE MAJEURE**

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

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

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

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

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

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

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

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

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

(A) PV System Owner, SRC Producer and their affiliated and parent companies failure at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

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

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

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

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

**ARTICLE IX**  
**LAWS AND REGULATORY BODIES**

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

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

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

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

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

If to Public Service:

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

If to SRC Producer:

CEC Solar #1130, LLC  
361 Centennial Pkwy, Suite 300  
Louisville, CO 80027

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

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

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

**SRC Producer**

CEC Solar #1130, LLC

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

**SRC Producer Representative:** Paul Spencer \_\_\_\_\_

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

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

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

**By:** Lee Gabler \_\_\_\_\_  
**Title:** \_\_\_\_\_

Digitally signed by Lee Gabler  
DN: cn=Lee Gabler, ou=Customer Solutions, ou=PS  
Company, email=lee.gabler@psc.state.co.us, c=US  
Date: 2017.05.17 13:42:12 -0500

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

As authorized agent for  
Public Service Company of Colorado

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

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

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

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

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

9/12/2016



**Exhibit A**  
**to**  
**Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

5260 Imboden Rd.  
Watkins, CO 80137

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

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

SRC Subscriber Name: \_\_\_\_\_  
SRC Subscriber Retail Customer Account No.: \_\_\_\_\_  
SRC Subscriber Service Address: \_\_\_\_\_  
\_\_\_\_\_  
SRC Subscriber E-mail Address: \_\_\_\_\_  
SRC Subscriber Mailing Address: \_\_\_\_\_  
SRC Subscriber Telephone No: \_\_\_\_\_ (Primary) \_\_\_\_\_ (Alt.)  
SRC Producer (Subscriber Organization) Name: \_\_\_\_\_  
Solar Garden ID No: \_\_\_\_\_  
Name and Location of Solar Garden: \_\_\_\_\_  
\_\_\_\_\_  
SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_ kW

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

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

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

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

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

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

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

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

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

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

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

**SRC SUBSCRIBER**

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

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

**SRC PRODUCER**

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

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

## Exhibit C

### to

## Construction Milestones

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have 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 shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months of receiving an award.

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

This Agreement is made and entered into this 17 day of March, 2017, 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 CEC Solar #1133, LLC ("SRC Producer"), a Colorado LLC, whose business address is 361 Centennial Pkwy, Suite 300 Louisville, CO 80027, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

**RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1984.5 kW.

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

**ARTICLE I**  
**DEFINITIONS**

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

1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.

1.2. "Common Ownership" shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.3. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.4. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

## **ARTICLE II**

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

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

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

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

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

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

One-time REC payment

2.3 Price and Payment. Public Service shall make a one-time payment to SRC Producer of \$\_\_\_\_\_. Such payment shall be made by check to the SRC Producer issued within thirty (30) days after the Date of Commercial Operation.

Negative Bid Price

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

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

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

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

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

### **ARTICLE III**

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

3.1 SRC Producer represents and warrants as follows:

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

9/12/2016

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

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

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

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

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

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

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

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

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

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

(e) At least 5 percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## **ARTICLE V**

### **PRODUCTION METER AND INTERCONNECTION**

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

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

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

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

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

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

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

**ARTICLE VI**  
**FORCE MAJEURE**

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

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

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

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

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

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

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

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

7.1 Events of default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below:

(A) PV System Owner, SRC Producer and their affiliated and parent companies failure at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

(B) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 Days after notice thereof shall have been given by the non-defaulting Party.

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the taxable consequences, if any, to SRC Producer with respect to the production and sale of Photovoltaic Energy or RECs, and SRC Producer is urged to seek professional advice regarding this issue.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer's administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

**ARTICLE X**  
**MISCELLANEOUS PROVISIONS**

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent, acceptable to Company, to assignment to any of SRC Producer's requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.



10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy  
Attn: Solar\*Rewards Community  
1800 Larimer St, 15<sup>th</sup> Floor  
Denver, CO 80202  
Fax: 1.800.252.4371

If to SRC Producer:

CEC Solar #1133, LLC  
361 Centennial Pkwy, Suite 300  
Louisville, CO 80027

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from SRC Producer, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

**SRC Producer**

CEC Solar #1133, LLC

**SRC Producer Name (printed):** \_\_\_\_\_

**SRC Producer Representative:** Paul Spencer

**Title:** CEO

**SRC Producer Signature:** \_\_\_\_\_ **Date:** 3/17/2017

**Public Service Company of Colorado d/b/a Xcel Energy**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

As authorized agent for  
Public Service Company of Colorado

**PV System Owner (if different from SRC Producer)**

**PV System Owner Name (printed):** \_\_\_\_\_

**PV System Owner Representative:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**PV System Owner Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

9/12/2016

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

**SRC Producer**

CEC Solar #1133, LLC

**SRC Producer Name (printed):** \_\_\_\_\_

**SRC Producer Representative:** Paul Spencer

**Title:** CEO

**SRC Producer Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Public Service Company of Colorado d/b/a Xcel Energy**

**By:** Lee Gabler

Digitally signed by Lee Gabler  
DN: cn=Lee Gabler, ou=Customer Solutions, ou=PS  
Company, email=lee.gabler@pscoenergy.com, c=US  
Date: 2017.03.17 13:47:56 -0500

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**As authorized agent for  
Public Service Company of Colorado**

**PV System Owner (if different from SRC Producer)**

**PV System Owner Name (printed):** \_\_\_\_\_

**PV System Owner Representative:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**PV System Owner Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

9/12/2016

**Exhibit A**  
**to**  
**Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

15990 CR 29  
Platteville, CO 80651

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

**SRC SUBSCRIBER AGENCY AGREEMENT  
FOR XCEL ENERGY SOLAR\*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: \_\_\_\_\_  
SRC Subscriber Retail Customer Account No.: \_\_\_\_\_  
SRC Subscriber Service Address: \_\_\_\_\_  
\_\_\_\_\_  
SRC Subscriber E-mail Address: \_\_\_\_\_  
SRC Subscriber Mailing Address: \_\_\_\_\_  
SRC Subscriber Telephone No: \_\_\_\_\_ (Primary) \_\_\_\_\_ (Alt.)  
SRC Producer (Subscriber Organization) Name: \_\_\_\_\_  
Solar Garden ID No: \_\_\_\_\_  
Name and Location of Solar Garden: \_\_\_\_\_  
\_\_\_\_\_  
SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_ kW

The undersigned SRC Subscriber hereby authorizes \_\_\_\_\_ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar\*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously

applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (b) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

**SRC SUBSCRIBER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SRC PRODUCER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit C to Construction Milestones

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have 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 shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months of receiving an award.





Application ID: SRC042456

## **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 Quincy II Solar Garden LLC ("SRC Producer"), a Colorado limited liability company, whose business address is c/o AEP OnSite Partners LLC, 155 West Nationwide Boulevard, Columbus, Ohio 43215, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

#### **RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1998 kW.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

#### **ARTICLE I** **DEFINITIONS**

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.2 hereof.
- 1.3. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.
- 1.4. "Force Majeure" shall have the meaning as set forth in Section 6.1 of this Agreement.
- 1.5. "House Power" shall mean the supply of retail power for consumption at the Solar Garden Site.
- 1.6. "Interconnection Agreement" shall mean the separate agreement to be entered into between SRC Producer and Public Service providing the terms and conditions by which SRC Producer may interconnect and operate the PV System in parallel with Public Service's electric distribution system at the Solar Garden Site.

1.7. "Monthly Subscription Information" shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.6 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber's identifying information, and the SRC Allocation applicable to each such SRC Subscriber's Subscription, reflecting each SRC Subscriber's allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.8. "Photovoltaic Energy" shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity, including any and all associated RECs, delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.9. "Production Meter" shall mean the measuring facility installed by Public Service pursuant to Section 5.1 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possession from SRC Producer to Public Service.

1.10. "Production Month" shall mean the calendar month during which Photovoltaic Energy is produced by the PV System and delivered to Public Service at the Production Meter.

1.11. "PV System" shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy subject to this Agreement.

1.12. "PV System Owner" shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System. If the PV System Owner is the same entity as SRC Producer, then Section 3.2 hereof shall not be applicable.

1.13. "Renewable Energy Credit" or "REC" shall have the meaning set forth in 4 CCR 723-3-3652(t) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the PV System's actual energy production or the PV System's energy production capability because of the PV System's environmental or renewable characteristics or attributes. 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. One REC results from one megawatt-hour of electric energy generated from an eligible energy resource.

1.14. "Solar Garden Site" shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement.

1.15. "Solar\*Rewards Community Application and Subscriber Management System" or "SRC Application System" is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service's Solar\*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber's allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$300 for each user that logs into to the SRC Application and Subscriber Management System.

1.16. "SRC Allocation" shall mean the monthly allocation, stated in kilowatts ("kW") as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber's Subscription reflecting such SRC Subscriber's allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.6 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.17. "SRC Credit" shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber's retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

1.18. "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.

1.19. "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.

1.20. "Subscription" shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

## **ARTICLE II**

### **TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS**

2.1 Sale and Delivery of Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy produced by the PV System shall be the full responsibility of the SRC Producer.

2.2 Delivery of RECs Associated with Photovoltaic Energy. Effective upon the Date of Commercial Operation, all of the RECs attributable to all Photovoltaic Energy produced by the PV System attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month, shall be delivered to Public Service at the Production Meter.

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

2.3 Price and Payment. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer the price of \$30.00 per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

One-time REC payment

2.3 Price and Payment. Public Service shall make a one-time payment to SRC Producer of \$\_\_\_\_\_. Such payment shall be made by check to the SRC Producer issued within thirty (30) days after the Date of Commercial Operation.

#### Negative Bid Price

2.3 The amount to be paid by SRC Producer to Public Service shall be expressed in dollars per megawatt-hour (MWh), SRC Producer shall pay Public Service the price of \_\_\_\_\_ per MWh of energy generated by the PV system for the subscribed portion of Photovoltaic Energy recorded at the Production Meter. Payments shall be made \_\_\_\_\_ by check to Public Service by SRC Producer. Such payments shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.4 Purchase and Sale of Unsubscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.5 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all Photovoltaic Energy output and/or the ability to transfer good and sufficient title of same to Public Service. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Public Service.

2.6 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

### **ARTICLE III**

#### **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer represents and warrants as follows:

(a) SRC Producer is either the PV System Owner or is a subscriber organization organized under Section 40-2-127, C.R.S., and has been duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer has been duly authorized to sell and deliver to Public Service Photovoltaic Energy produced by the PV System on behalf of all SRC Subscribers having valid Subscriptions in the PV System, the purchase price and full consideration for which are the SRC Credits to be applied on the SRC Subscribers' electric service bills in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

(c) SRC Producer has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the PV System to Public Service on behalf of the PV System Owner, the SRC Subscribers and itself.

(d) SRC Producer has the right and authority to sell all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter.

3.2 If the PV System Owner and the SRC Producer are not the same person, then the undersigned PV System Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes SRC Producer to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions. The conditions set forth in the following subparagraphs (a) through (f) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of such conditions. For purposes of this Agreement, the SRC Allocation for any SRC Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid SRC Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such SRC Allocation is changed by SRC Producer in a manner that satisfies all such conditions.

(a) No SRC Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) Unless the SRC Subscriber is an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, each Subscription shall be sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premise served by Public Service and shall be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) At least five percent (5%) of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed shall not be the generation of electricity for retail or wholesale sale.

3.4 Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. Public Service shall have the right hereunder to refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during the period it is not in compliance with any of such conditions.

(a) The PV System shall have at least ten SRC Subscribers.

(b) The PV System shall have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System shall be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If, as the result of the official and valid action of any governmental body, the PV System is no longer located within Public Service's existing service territory, then Public Service shall also have the right to terminate this Agreement effective on or after the date the PV System is no longer located within Public Service's existing service territory, by providing ten (10) days advance written notice to SRC Producer.

(d) **Should a Subscriber Organization, SRC Owner, SRC Producer and their affiliated and parent companies own multiple PV systems on the same "site," the total capacity of all of the CSGs on the "site" may not exceed 2 MW.** The definition of a "site" is set forth in the statute and the rules of the PUC.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System shall be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 False Representation. Any representation or warranty made by SRC Producer in this Agreement that shall prove to have been false or misleading in any material respect when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 hereof.

3.8 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

#### **ARTICLE IV** **TERM, COMMERCIAL OPERATION AND PERFORMANCE**

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

#### **4.2 Project Development**

(A) Prior to the Commercial Operation Date, SRC Producer agrees to (i) submit semi-annual progress reports to Company including current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project, (iii) Upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained.

(B) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this agreement, *provided, however, that* Company shall comply with all of SRC Producer's applicable safety and health rules and requirements. Company's monitoring of

the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the Production Meter has been installed; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within sixty (60) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as a required deposit in connection with its application for the PV System under Public Service's Solar\*Rewards Community Program. If Commercial Operation is not achieved within 18 months of the date the application is created by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3665(d)(IV)(A) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3665, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged or destroyed, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy or RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to the estimated annual generation of the PV System, as determined via PVWATTS, multiplied by the number of years remaining in the Term as of the effective date of such termination, plus a prorated amount of the REC payment.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy produced and delivered during such Production Month to



calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (e.g., account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. In the event Public Service discovers through a credible source that the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer.

4.9 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.10 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.11 No Relocation. Once Commercial Operation has been obtained, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.12 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.13 Semi-annual Progress Reports. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service. Progress reports are no longer required once the garden has obtained commercial operation.

4.14 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

**ARTICLE V**  
**PRODUCTION METER AND INTERCONNECTION**

5.1 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.2 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.

5.3 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.2 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.4 Interconnection Agreement. The Parties recognize that SRC Producer and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3667, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.5 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.5. SRC Producer's right to self-generate hereunder

shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

## **ARTICLE VI**

### **FORCE MAJEURE**

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy or RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the Customer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

7.1 Events of default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below:

(A) SRC Producer's failure to meet any of the milestones due to be completed before or at the time of each semi-annual progress report, review or meeting conducted pursuant to Paragraph 4.2(A). As part of the semi-annual progress report, review or meeting, SRC Producer shall present a remediation plan acceptable to the Company in its sole discretion. If SRC Producer fails to present an acceptable remediation plan, the Company may, in its sole discretion, require SRC Producer to forfeit up to one-third (1/3) of its deposit, or terminate SRC's Producer's participation in the program. If Public Service terminates this Agreement under this paragraph, it shall have no further financial or other obligation to SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(B) SRC Producer's failure to achieve Commercial Operation as specified in Exhibit C – Milestones. SRC Producer's failure to achieve Commercial Operation as specified in Exhibit C – Milestones may result, in the Company's sole discretion, result in forfeiture of the SRC Producer's deposit or termination from the program. If Public Service terminates this Agreement under this paragraph, it shall have no further financial or other obligation to SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(C) Should at any time during the Term of this agreement the PV System Owner, SRC Producer and their affiliated and parent companies own multiple PV systems on the same "site," and the total capacity of such PV systems exceeds 2 MW, Company may, after sixty (60) Days notice and in its sole discretion, terminate this

Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(D) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 Days after notice thereof shall have been given by the non-defaulting Party.

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the taxable consequences, if any, to SRC Producer with respect to the production and sale of Photovoltaic Energy or RECs, and SRC Producer is urged to seek professional advice regarding this issue.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer's administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent, acceptable to Company, to assignment to any of SRC Producer's requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy  
Attn: Solar\*Rewards  
414 Nicollet Mall, 6<sup>th</sup> Floor  
Minneapolis MN 55401  
Fax: 1.800.252.4371

If to SRC Producer:

Quincy II Solar Garden LLC  
c/o AEP OnSite Partners LLC  
155 West Nationwide Boulevard  
Columbus, Ohio 43215  
Attn: Joel H. Jansen  
Phone: 614.583.6472  
Email: jhjansen@aepes.com

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from SRC Producer,

and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

**SRC Producer**

**SRC Producer Name (printed):** Quincy II Solar Garden LLC, a Colorado limited liability company

**SRC Producer Representative:** Joel H. Jansen  
**Title:** Authorized Agent

**SRC Producer Signature:** Joel H. Jansen **Date:** 8/25/17

**Public Service Company of Colorado d/b/a Xcel Energy**

Lee Gabler

Digitally signed by Lee Gabler  
DN: cn=Lee Gabler, o=Customer Solutions,  
ou=Sr Director, Customer Strategy and  
Solutions,  
email=lee.gabler@xcelenergy.com, cn=US  
Date: 2017.08.11 14:32:11 -05'00'

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**As authorized agent for**  
**Public Service Company of Colorado**

**PV System Owner (if different from SRC Producer)**

**PV System Owner Name (printed):** \_\_\_\_\_

**PV System Owner Representative:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**PV System Owner Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_



**Exhibit A  
to  
Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

**Exhibit B  
to  
Solar\*Rewards Community Agreement**

**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: Quincy II Solar Garden LLC

Solar Garden ID No: SRC042456

Name and Location of Solar Garden: Quincy II Solar Garden LLC is located at 28102 East Quincy Avenue Unit 2, Aurora CO 80138

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_ kW

The undersigned SRC Subscriber hereby authorizes Quincy II Solar Garden LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar\*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC

Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (b) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be

that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

**SRC SUBSCRIBER**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SRC PRODUCER**

Quincy II Solar Garden LLC, a  
Colorado limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit C  
 to  
 Construction Milestones**

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have submitted post bid information (10 subscribers, deposit, and low income subscriber summary).
	2	The SRC Producer Agreement has been executed.
	3	SRC Producer shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months from initial application approval.



Application ID: SRC042457

## **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 Imboden III LLC ("SRC Producer"), a Colorado limited liability company, whose business address is c/o AEP OnSite Partners LLC, 155 West Nationwide Boulevard, Columbus, Ohio 43215, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

### RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1995 kW.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

### **ARTICLE I** **DEFINITIONS**

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.2 hereof.
- 1.3. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.
- 1.4. "Force Majeure" shall have the meaning as set forth in Section 6.1 of this Agreement.
- 1.5. "House Power" shall mean the supply of retail power for consumption at the Solar Garden Site.
- 1.6. "Interconnection Agreement" shall mean the separate agreement to be entered into between SRC Producer and Public Service providing the terms and conditions by which SRC Producer may interconnect and operate the PV System in parallel with Public Service's electric distribution system at the Solar Garden Site.

1.7. "Monthly Subscription Information" shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.6 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber's identifying information, and the SRC Allocation applicable to each such SRC Subscriber's Subscription, reflecting each SRC Subscriber's allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.8. "Photovoltaic Energy" shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity, including any and all associated RECs, delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.9. "Production Meter" shall mean the measuring facility installed by Public Service pursuant to Section 5.1 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possession from SRC Producer to Public Service.

1.10. "Production Month" shall mean the calendar month during which Photovoltaic Energy is produced by the PV System and delivered to Public Service at the Production Meter.

1.11. "PV System" shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy subject to this Agreement.

1.12. "PV System Owner" shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System. If the PV System Owner is the same entity as SRC Producer, then Section 3.2 hereof shall not be applicable.

1.13. "Renewable Energy Credit" or "REC" shall have the meaning set forth in 4 CCR 723-3-3652(t) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the PV System's actual energy production or the PV System's energy production capability because of the PV System's environmental or renewable characteristics or attributes. 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. One REC results from one megawatt-hour of electric energy generated from an eligible energy resource.

1.14. "Solar Garden Site" shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement.

1.15. “Solar\*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar\*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$300 for each user that logs into to the SRC Application and Subscriber Management System.

1.16. “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.6 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.17. “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.18. “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.

1.19. “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.

1.20. “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

## **ARTICLE II**

### **TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS**

2.1 Sale and Delivery of Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber’s bill for retail electric service in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs based upon the SRC Subscriber’s SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.



(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy produced by the PV System shall be the full responsibility of the SRC Producer.

2.2 Delivery of RECs Associated with Photovoltaic Energy. Effective upon the Date of Commercial Operation, all of the RECs attributable to all Photovoltaic Energy produced by the PV System attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month, shall be delivered to Public Service at the Production Meter.

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

2.3 Price and Payment. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer the price of \$30.00 per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

One-time REC payment

2.3 Price and Payment. Public Service shall make a one-time payment to SRC Producer of \$\_\_\_\_\_. Such payment shall be made by check to the SRC Producer issued within thirty (30) days after the Date of Commercial Operation.

Negative Bid Price

2.3 The amount to be paid by SRC Producer to Public Service shall be expressed in dollars per megawatt-hour (MWh), SRC Producer shall pay Public Service the price of \_\_\_\_\_ per MWh of energy generated by the PV system for the subscribed portion of Photovoltaic Energy recorded at the Production Meter. Payments shall be made \_\_\_\_\_ by check to Public Service by SRC Producer. Such payments shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.4 Purchase and Sale of Unsubscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.5 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all Photovoltaic Energy output and/or the ability to transfer good and sufficient title of same to Public Service. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Public Service.

2.6 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

### **ARTICLE III**

#### **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer represents and warrants as follows:

(a) SRC Producer is either the PV System Owner or is a subscriber organization organized under Section 40-2-127, C.R.S., and has been duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer has been duly authorized to sell and deliver to Public Service Photovoltaic Energy produced by the PV System on behalf of all SRC Subscribers having valid Subscriptions in the PV System, the purchase price and full consideration for which are the SRC Credits to be applied on the SRC Subscribers' electric service bills in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

(c) SRC Producer has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the PV System to Public Service on behalf of the PV System Owner, the SRC Subscribers and itself.

(d) SRC Producer has the right and authority to sell all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter.

3.2 If the PV System Owner and the SRC Producer are not the same person, then the undersigned PV System Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes SRC Producer to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions. The conditions set forth in the following subparagraphs (a) through (f) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of such conditions. For purposes of this Agreement, the SRC Allocation for any SRC Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid SRC Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such SRC Allocation is changed by SRC Producer in a manner that satisfies all such conditions.

(a) No SRC Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) Unless the SRC Subscriber is an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, each Subscription shall be sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premise served by Public Service and shall be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) At least five percent (5%) of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed shall not be the generation of electricity for retail or wholesale sale.

3.4 Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. Public Service shall have the right hereunder to refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during the period it is not in compliance with any of such conditions.

(a) The PV System shall have at least ten SRC Subscribers.

(b) The PV System shall have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System shall be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If, as the result of the official and valid action of any governmental body, the PV System is no longer located within Public Service's existing service territory, then Public Service shall also have the right to terminate this Agreement effective on or after the date the PV System is no longer located within Public Service's existing service territory, by providing ten (10) days advance written notice to SRC Producer.

(d) **Should a Subscriber Organization, SRC Owner, SRC Producer and their affiliated and parent companies own multiple PV systems on the same "site," the total capacity of all of the CSGs on the "site" may not exceed 2 MW.** The definition of a "site" is set forth in the statute and the rules of the PUC.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System shall be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 False Representation. Any representation or warranty made by SRC Producer in this Agreement that shall prove to have been false or misleading in any material respect when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 hereof.

3.8 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

#### **ARTICLE IV** **TERM, COMMERCIAL OPERATION AND PERFORMANCE**

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

#### **4.2 Project Development**

(A) Prior to the Commercial Operation Date, SRC Producer agrees to (i) submit semi-annual progress reports to Company including current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project, (iii) Upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained.

(B) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this agreement, *provided, however, that* Company shall comply with all of SRC Producer's applicable safety and health rules and requirements. Company's monitoring of

the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the Production Meter has been installed; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within sixty (60) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as a required deposit in connection with its application for the PV System under Public Service's Solar\*Rewards Community Program. If Commercial Operation is not achieved within 18 months of the date the application is created by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3665(d)(IV)(A) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3665, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged or destroyed, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy or RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to the estimated annual generation of the PV System, as determined via PVWATTS, multiplied by the number of years remaining in the Term as of the effective date of such termination, plus a prorated amount of the REC payment.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy produced and delivered during such Production Month to

calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (e.g., account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. In the event Public Service discovers through a credible source that the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer.

4.9 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.10 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.11 No Relocation. Once Commercial Operation has been obtained, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.12 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.13 Semi-annual Progress Reports. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service. Progress reports are no longer required once the garden has obtained commercial operation.

4.14 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

**ARTICLE V**  
**PRODUCTION METER AND INTERCONNECTION**

5.1 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.2 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.

5.3 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.2 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.4 Interconnection Agreement. The Parties recognize that SRC Producer and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3667, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.5 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.5. SRC Producer's right to self-generate hereunder

shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

## **ARTICLE VI**

### **FORCE MAJEURE**

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;



- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy or RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the Customer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

7.1 Events of default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below:

(A) SRC Producer's failure to meet any of the milestones due to be completed before or at the time of each semi-annual progress report, review or meeting conducted pursuant to Paragraph 4.2(A). As part of the semi-annual progress report, review or meeting, SRC Producer shall present a remediation plan acceptable to the Company in its sole discretion. If SRC Producer fails to present an acceptable remediation plan, the Company may, in its sole discretion, require SRC Producer to forfeit up to one-third (1/3) of its deposit, or terminate SRC's Producer's participation in the program. If Public Service terminates this Agreement under this paragraph, it shall have no further financial or other obligation to SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(B) SRC Producer's failure to achieve Commercial Operation as specified in Exhibit C – Milestones. SRC Producer's failure to achieve Commercial Operation as specified in Exhibit C – Milestones may result, in the Company's sole discretion, result in forfeiture of the SRC Producer's deposit or termination from the program. If Public Service terminates this Agreement under this paragraph, it shall have no further financial or other obligation to SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(C) Should at any time during the Term of this agreement the PV System Owner, SRC Producer and their affiliated and parent companies own multiple PV systems on the same "site," and the total capacity of such PV systems exceeds 2 MW, Company may, after sixty (60) Days notice and in its sole discretion, terminate this

Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(D) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 Days after notice thereof shall have been given by the non-defaulting Party.

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the taxable consequences, if any, to SRC Producer with respect to the production and sale of Photovoltaic Energy or RECs, and SRC Producer is urged to seek professional advice regarding this issue.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer's administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent, acceptable to Company, to assignment to any of SRC Producer's requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy  
Attn: Solar\*Rewards  
414 Nicollet Mall, 6<sup>th</sup> Floor  
Minneapolis MN 55401  
Fax: 1.800.252.4371

If to SRC Producer:

Imboden III Solar LLC  
c/o AEP OnSite Partners LLC  
155 West Nationwide Boulevard  
Columbus, Ohio 43215  
Attn: Joel H. Jansen  
Phone: 614.583.6472  
Email: jhjansen@aepes.com

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from SRC Producer,

and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

**SRC Producer**

**SRC Producer Name (printed):** Imboden III Solar LLC, a Colorado limited liability company

**SRC Producer Representative:** Joel H. Jansen

**Title:** Authorized Agent

**SRC Producer Signature:** Joel H. Jansen **Date:** 8/25/17

**Public Service Company of Colorado d/b/a Xcel Energy**

**Lee Gabler**

Digitally signed by Lee Gabler  
DN: cn=Lee Gabler, ou=Customer  
Solutions, ou=IS Director, Customer  
Strategy and Solutions,  
email=lee.gabler@xcelenergy.com, c=US  
Date: 2017.08.11 14:31:00 -05'00'

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**As authorized agent for  
Public Service Company of Colorado**

**PV System Owner (if different from SRC Producer)**

**PV System Owner Name (printed):** \_\_\_\_\_

**PV System Owner Representative:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**PV System Owner Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Exhibit A  
to  
Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

**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: Imboden III Solar LLC

Solar Garden ID No: SRC042457

Name and Location of Solar Garden: Imboden III Solar LLC is located at 33975 East 48th Avenue, Watkins, CO 80137

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_kW

The undersigned SRC Subscriber hereby authorizes Imboden III Solar LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar\*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC

Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (b) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgment. 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**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SRC PRODUCER**

Imboden III Solar LLC, a  
Colorado limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit C  
to  
Construction Milestones**

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have submitted post bid information (10 subscribers, deposit, and low income subscriber summary).
	2	The SRC Producer Agreement has been executed.
	3	SRC Producer shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months from initial application approval.



Application ID: SRC042458

## **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 Imboden II Solar LLC ("SRC Producer"), a Colorado limited liability company whose business address is c/o AEP OnSite Partners LLC, 155 West Nationwide Boulevard, Columbus, Ohio 43215, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

### RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1998 kW.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

### **ARTICLE I** **DEFINITIONS**

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.2 hereof.
- 1.3. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.
- 1.4. "Force Majeure" shall have the meaning as set forth in Section 6.1 of this Agreement.
- 1.5. "House Power" shall mean the supply of retail power for consumption at the Solar Garden Site.
- 1.6. "Interconnection Agreement" shall mean the separate agreement to be entered into between SRC Producer and Public Service providing the terms and conditions by which SRC Producer may interconnect and operate the PV System in parallel with Public Service's electric distribution system at the Solar Garden Site.

1.7. "Monthly Subscription Information" shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.6 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber's identifying information, and the SRC Allocation applicable to each such SRC Subscriber's Subscription, reflecting each SRC Subscriber's allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.8. "Photovoltaic Energy" shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity, including any and all associated RECs, delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.9. "Production Meter" shall mean the measuring facility installed by Public Service pursuant to Section 5.1 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possession from SRC Producer to Public Service.

1.10. "Production Month" shall mean the calendar month during which Photovoltaic Energy is produced by the PV System and delivered to Public Service at the Production Meter.

1.11. "PV System" shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy subject to this Agreement.

1.12. "PV System Owner" shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System. If the PV System Owner is the same entity as SRC Producer, then Section 3.2 hereof shall not be applicable.

1.13. "Renewable Energy Credit" or "REC" shall have the meaning set forth in 4 CCR 723-3-3652(t) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the PV System's actual energy production or the PV System's energy production capability because of the PV System's environmental or renewable characteristics or attributes. 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. One REC results from one megawatt-hour of electric energy generated from an eligible energy resource.

1.14. "Solar Garden Site" shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement.

1.15. "Solar\*Rewards Community Application and Subscriber Management System" or "SRC Application System" is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service's Solar\*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber's allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$300 for each user that logs into to the SRC Application and Subscriber Management System.

1.16. "SRC Allocation" shall mean the monthly allocation, stated in kilowatts ("kW") as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber's Subscription reflecting such SRC Subscriber's allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.6 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.17. "SRC Credit" shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber's retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

1.18. "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.

1.19. "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.

1.20. "Subscription" shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

## **ARTICLE II**

### **TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS**

2.1 Sale and Delivery of Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy produced by the PV System shall be the full responsibility of the SRC Producer.

2.2 Delivery of RECs Associated with Photovoltaic Energy. Effective upon the Date of Commercial Operation, all of the RECs attributable to all Photovoltaic Energy produced by the PV System attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month, shall be delivered to Public Service at the Production Meter.

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

2.3 Price and Payment. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer the price of \$30.00 per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

One-time REC payment

2.3 Price and Payment. Public Service shall make a one-time payment to SRC Producer of \$ \_\_\_\_\_. Such payment shall be made by check to the SRC Producer issued within thirty (30) days after the Date of Commercial Operation.

#### Negative Bid Price

2.3 The amount to be paid by SRC Producer to Public Service shall be expressed in dollars per megawatt-hour (MWh), SRC Producer shall pay Public Service the price of \_\_\_\_\_ per MWh of energy generated by the PV system for the subscribed portion of Photovoltaic Energy recorded at the Production Meter. Payments shall be made \_\_\_\_\_ by check to Public Service by SRC Producer. Such payments shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.4 Purchase and Sale of Unsubscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.5 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all Photovoltaic Energy output and/or the ability to transfer good and sufficient title of same to Public Service. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Public Service.

2.6 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

### **ARTICLE III**

#### **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer represents and warrants as follows:

(a) SRC Producer is either the PV System Owner or is a subscriber organization organized under Section 40-2-127, C.R.S., and has been duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer has been duly authorized to sell and deliver to Public Service Photovoltaic Energy produced by the PV System on behalf of all SRC Subscribers having valid Subscriptions in the PV System, the purchase price and full consideration for which are the SRC Credits to be applied on the SRC Subscribers' electric service bills in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

(c) SRC Producer has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the PV System to Public Service on behalf of the PV System Owner, the SRC Subscribers and itself.

(d) SRC Producer has the right and authority to sell all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter.

3.2 If the PV System Owner and the SRC Producer are not the same person, then the undersigned PV System Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes SRC Producer to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions. The conditions set forth in the following subparagraphs (a) through (f) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of such conditions. For purposes of this Agreement, the SRC Allocation for any SRC Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid SRC Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such SRC Allocation is changed by SRC Producer in a manner that satisfies all such conditions.

(a) No SRC Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) Unless the SRC Subscriber is an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, each Subscription shall be sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premise served by Public Service and shall be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) At least five percent (5%) of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed shall not be the generation of electricity for retail or wholesale sale.

3.4 Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. Public Service shall have the right hereunder to refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during the period it is not in compliance with any of such conditions.

(a) The PV System shall have at least ten SRC Subscribers.

(b) The PV System shall have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System shall be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If, as the result of the official and valid action of any governmental body, the PV System is no longer located within Public Service's existing service territory, then Public Service shall also have the right to terminate this Agreement effective on or after the date the PV System is no longer located within Public Service's existing service territory, by providing ten (10) days advance written notice to SRC Producer.



(d) **Should a Subscriber Organization, SRC Owner, SRC Producer and their affiliated and parent companies own multiple PV systems on the same "site," the total capacity of all of the CSGs on the "site" may not exceed 2 MW.** The definition of a "site" is set forth in the statute and the rules of the PUC.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System shall be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 False Representation. Any representation or warranty made by SRC Producer in this Agreement that shall prove to have been false or misleading in any material respect when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 hereof.

3.8 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

#### **ARTICLE IV**

#### **TERM, COMMERCIAL OPERATION AND PERFORMANCE**

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

#### **4.2 Project Development**

(A) Prior to the Commercial Operation Date, SRC Producer agrees to (i) submit semi-annual progress reports to Company including current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project, (iii) Upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained.

(B) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this agreement, *provided, however, that* Company shall comply with all of SRC Producer's applicable safety and health rules and requirements. Company's monitoring of

the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the Production Meter has been installed; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within sixty (60) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as a required deposit in connection with its application for the PV System under Public Service's Solar\*Rewards Community Program. If Commercial Operation is not achieved within 18 months of the date the application is created by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3665(d)(IV)(A) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3665, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged or destroyed, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy or RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to the estimated annual generation of the PV System, as determined via PVWATTS, multiplied by the number of years remaining in the Term as of the effective date of such termination, plus a prorated amount of the REC payment.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy produced and delivered during such Production Month to

calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (e.g., account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. In the event Public Service discovers through a credible source that the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer.

4.9 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.10 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.11 No Relocation. Once Commercial Operation has been obtained, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.12 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.13 Semi-annual Progress Reports. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service. Progress reports are no longer required once the garden has obtained commercial operation.

4.14 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

**ARTICLE V**  
**PRODUCTION METER AND INTERCONNECTION**

5.1 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.2 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.

5.3 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.2 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.4 Interconnection Agreement. The Parties recognize that SRC Producer and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3667, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.5 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.5. SRC Producer's right to self-generate hereunder

shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

## **ARTICLE VI**

### **FORCE MAJEURE**

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy or RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the Customer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

7.1 Events of default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below:

(A) SRC Producer's failure to meet any of the milestones due to be completed before or at the time of each semi-annual progress report, review or meeting conducted pursuant to Paragraph 4.2(A). As part of the semi-annual progress report, review or meeting, SRC Producer shall present a remediation plan acceptable to the Company in its sole discretion. If SRC Producer fails to present an acceptable remediation plan, the Company may, in its sole discretion, require SRC Producer to forfeit up to one-third (1/3) of its deposit, or terminate SRC's Producer's participation in the program. If Public Service terminates this Agreement under this paragraph, it shall have no further financial or other obligation to SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(B) SRC Producer's failure to achieve Commercial Operation as specified in Exhibit C – Milestones. SRC Producer's failure to achieve Commercial Operation as specified in Exhibit C – Milestones may result, in the Company's sole discretion, result in forfeiture of the SRC Producer's deposit or termination from the program. If Public Service terminates this Agreement under this paragraph, it shall have no further financial or other obligation to SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(C) Should at any time during the Term of this agreement the PV System Owner, SRC Producer and their affiliated and parent companies own multiple PV systems on the same "site," and the total capacity of such PV systems exceeds 2 MW, Company may, after sixty (60) Days notice and in its sole discretion, terminate this

Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(D) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 Days after notice thereof shall have been given by the non-defaulting Party.

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the taxable consequences, if any, to SRC Producer with respect to the production and sale of Photovoltaic Energy or RECs, and SRC Producer is urged to seek professional advice regarding this issue.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer's administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent, acceptable to Company, to assignment to any of SRC Producer's requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.



10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:  
Xcel Energy  
Attn: Solar\*Rewards  
414 Nicollet Mall, 6<sup>th</sup> Floor  
Minneapolis Minnesota 55401  
Fax: 1.800.252.4371

If to SRC Producer:  
Imboden Solar II LLC  
c/o AEP Onsite Partners LLC  
155 West Nationwide Boulevard  
Columbus, Ohio 43215  
Attn: Joel H. Jansen  
Phone: 614.583.6472  
Email: jhjansen@aepes.com

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from SRC Producer,

and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

**SRC Producer**

**SRC Producer Name (printed):** Imboden II Solar LLC, a Colorado limited liability company

**SRC Producer Representative:** Joel H. Jensen

**Title:** Authorized Agent

**SRC Producer Signature:** Joel H. Jensen **Date:** 8/25/17

**Public Service Company of Colorado d/b/a Xcel Energy**

**Lee Gabler**

Digitally signed by Lee Gabler  
DN: cn=Lee Gabler, o=Customer Solutions,  
ou=Sr Director, Customer Strategy and  
Solutions,  
email=lee.gabler@xcelenergy.com, c=US  
Date: 2017.08.11 14:31:46 -0500

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**As authorized agent for  
Public Service Company of Colorado**

**PV System Owner (if different from SRC Producer)**

**PV System Owner Name (printed):** \_\_\_\_\_

**PV System Owner Representative:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**PV System Owner Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Exhibit A  
to  
Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

Lot 6:

A part of the Southern half of Section 18, Township 3 South, Range 64 West of the 6th Principal Meridian, County of Adams, State of Colorado, more particularly described as follows:

COMMENCING at the Southeast corner of Section 18;

Thence N00°17'44"W, along the East line of said Southeast 1/4, 30.00 feet;

Thence N89°30'07"W, parallel with the South line of said Southeast 1/4, 30.00 feet to the point of intersection of the West Right-of-Way line of Imboden Road and the North Right-of-Way line of East 48th Avenue;

Thence continuing N89°30'07"W, along said North Right-of-Way line of East 48th Avenue, a distance of 1755.36 feet;

Thence North 00°17'44" West a distance of 1737.44 feet to the Point of Beginning; Thence North 00°17'44" West a distance of 868.72 feet;

Thence South 89°28'58" East a distance of 1755.37 feet; Thence South 00°17'44" East a distance of 868.52 feet;

Thence North 89°29'21" West a distance of 1755.37 feet to the Point of Beginning, County of Adams, State of Colorado.

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

**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: Imboden II Solar LLC

Solar Garden ID No: SRC042458

Name and Location of Solar Garden: Imboden II Solar LLC is located at 5135 Imboden Road, Watkins, Colorado 80137

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_kW

The undersigned SRC Subscriber hereby authorizes Imboden II Solar LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar\*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC

Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (b) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be

that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

**SRC SUBSCRIBER**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SRC PRODUCER**

Imboden II Solar LLC, a  
Colorado limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit C  
 to  
 Construction Milestones**

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have submitted post bid information (10 subscribers, deposit, and low income subscriber summary).
	2	The SRC Producer Agreement has been executed.
	3	SRC Producer shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months from initial application approval.



Application ID: SRC042532

## **Solar\*Rewards® Community® Producer Agreement**

Solar\*Rewards Community Photovoltaic (PV) Systems  
For SRC Producers

This Agreement is made and entered into this 6th day of April, 2017, 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 San Luis Solar Garden LLC ("SRC Producer"), a <sup>Colorado limited</sup> ~~liability company~~, whose business address is 1120 Pearl St. Suite 200, Boulder, CO 80302, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

### RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1,499.4 kW.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

### **ARTICLE I** **DEFINITIONS**

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.2 hereof.
- 1.3. "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.
- 1.4. "Force Majeure" shall have the meaning as set forth in Section 6.1 of this Agreement.
- 1.5. "House Power" shall mean the supply of retail power for consumption at the Solar Garden Site.
- 1.6. "Interconnection Agreement" shall mean the separate agreement to be entered into between SRC Producer and Public Service providing the terms and conditions by which SRC Producer may interconnect and operate the PV System in parallel with Public Service's electric distribution system at the Solar Garden Site.



1.7. "Monthly Subscription Information" shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.6 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber's identifying information, and the SRC Allocation applicable to each such SRC Subscriber's Subscription, reflecting each SRC Subscriber's allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.8. "Photovoltaic Energy" shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity, including any and all associated RECs, delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.9. "Production Meter" shall mean the measuring facility installed by Public Service pursuant to Section 5.1 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possession from SRC Producer to Public Service.

1.10. "Production Month" shall mean the calendar month during which Photovoltaic Energy is produced by the PV System and delivered to Public Service at the Production Meter.

1.11. "PV System" shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy subject to this Agreement.

1.12. "PV System Owner" shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System. If the PV System Owner is the same entity as SRC Producer, then Section 3.2 hereof shall not be applicable.

1.13. "Renewable Energy Credit" or "REC" shall have the meaning set forth in 4 CCR 723-3-3652(t) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the PV System's actual energy production or the PV System's energy production capability because of the PV System's environmental or renewable characteristics or attributes. 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. One REC results from one megawatt-hour of electric energy generated from an eligible energy resource.

1.14. "Solar Garden Site" shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement.

1.15. "Solar\*Rewards Community Application and Subscriber Management System" or "SRC Application System" is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service's Solar\*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber's allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$300 for each user that logs into to the SRC Application and Subscriber Management System.

1.16. "SRC Allocation" shall mean the monthly allocation, stated in kilowatts ("kW") as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber's Subscription reflecting such SRC Subscriber's allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.6 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.17. "SRC Credit" shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber's retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

1.18. "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.

1.19. "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.

1.20. "Subscription" shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

## ARTICLE II

### TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy produced by the PV System shall be the full responsibility of the SRC Producer.

2.2 Delivery of RECs Associated with Photovoltaic Energy. Effective upon the Date of Commercial Operation, all of the RECs attributable to all Photovoltaic Energy produced by the PV System attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month, shall be delivered to Public Service at the Production Meter.

The appropriate Section 2.3 shall be used as applicable

Positive REC price paid based upon production

2.3 Price and Payment. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer \$30.00 (THIRTY DOLLARS) per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Purchase and Sale of Unsubscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.5 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all Photovoltaic Energy output and/or the ability to transfer good and sufficient title of same to Public Service. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Public Service.

2.6 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

### **ARTICLE III**

#### **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer represents and warrants as follows:

(a) SRC Producer is either the PV System Owner or is a subscriber organization organized under Section 40-2-127, C.R.S., and has been duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer has been duly authorized to sell and deliver to Public Service Photovoltaic Energy produced by the PV System on behalf of all SRC Subscribers having valid Subscriptions in the PV System, the purchase price and full consideration for which are the SRC Credits to be applied on the SRC Subscribers' electric service bills in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

(c) SRC Producer has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the PV System to Public Service on behalf of the PV System Owner, the SRC Subscribers and itself.

(d) SRC Producer has the right and authority to sell all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter.

3.2 If the PV System Owner and the SRC Producer are not the same person, then the undersigned PV System Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes SRC Producer to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions. The conditions set forth in the following subparagraphs (a) through (f) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of such conditions. For purposes of this Agreement, the SRC Allocation for any SRC Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid SRC Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such SRC Allocation is changed by SRC Producer in a manner that satisfies all such conditions.

(a) No SRC Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) Unless the SRC Subscriber is an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, each Subscription shall be sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premise served by Public Service and shall be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) At least five percent (5%) of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed shall not be the generation of electricity for retail or wholesale sale.

3.4 Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. Public Service shall have the right hereunder to refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during the period it is not in compliance with any of such conditions.

(a) The PV System shall have at least ten SRC Subscribers.

(b) The PV System shall have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System shall be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If, as the result of the official and valid action of any governmental body, the PV System is no longer located within Public Service's existing service territory, then Public Service shall also have the right to terminate this Agreement effective on or after the date the PV System is no longer located within Public Service's existing service territory, by providing ten (10) days advance written notice to SRC Producer.

(d) **Should a Subscriber Organization, SRC Owner, SRC Producer and their affiliated and parent companies own multiple PV systems on the same "site," the total capacity of all of the CSGs on the "site" may not exceed 2 MW.** The definition of a "site" is set forth in the statute and the rules of the PUC.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System shall be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 False Representation. Any representation or warranty made by SRC Producer in this Agreement that shall prove to have been false or misleading in any material respect when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 hereof.

3.8 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

#### **ARTICLE IV** **TERM, COMMERCIAL OPERATION AND PERFORMANCE**

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

##### 4.2 Project Development

(B) Prior to the Commercial Operation Date, SRC Producer agrees to (i) submit semi-annual progress reports to Company including current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project, (iii) Upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained.

(C) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this agreement, *provided, however, that* Company shall comply with all of SRC Producer's applicable safety and health rules and requirements. Company's monitoring of



the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the Production Meter has been installed; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within sixty (60) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as a required deposit in connection with its application for the PV System under Public Service's Solar\*Rewards Community Program. If Commercial Operation is not achieved within 18 months of the date the application is created by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3665(d)(IV)(A) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3665, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged or destroyed, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy or RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to the estimated annual generation of the PV System, as determined via PVWATTS, multiplied by the number of years remaining in the Term as of the effective date of such termination, plus a prorated amount of the REC payment.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy produced and delivered during such Production Month to

calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (e.g., account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. In the event Public Service discovers through a credible source that the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer.

4.9 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.10 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.11 No Relocation. Once Commercial Operation has been obtained, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.12 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.13 Semi-annual Progress Reports. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service. Progress reports are no longer required once the garden has obtained commercial operation.

4.14 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.



**ARTICLE V**  
**PRODUCTION METER AND INTERCONNECTION**

5.1 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.2 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.

5.3 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.2 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.4 Interconnection Agreement. The Parties recognize that SRC Producer and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3667, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.5 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.5. SRC Producer's right to self-generate hereunder

shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

## **ARTICLE VI**

### **FORCE MAJEURE**

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy or RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the Customer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

## ARTICLE VII

### DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below:

(A) SRC Producer's failure to meet any of the milestones due to be completed before or at the time of each semi-annual progress report, review or meeting conducted pursuant to Paragraph 4.2(A). As part of the semi-annual progress report, review or meeting, SRC Producer shall present a remediation plan acceptable to the Company in its sole discretion. If SRC Producer fails to present an acceptable remediation plan, the Company may, in its sole discretion, require SRC Producer to forfeit up to one-third (1/3) of its deposit, or terminate SRC's Producer's participation in the program. If Public Service terminates this Agreement under this paragraph, it shall have no further financial or other obligation to SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(B) SRC Producer's failure to achieve Commercial Operation as specified in Exhibit C – Milestones. SRC Producer's failure to achieve Commercial Operation as specified in Exhibit C – Milestones may result, in the Company's sole discretion, result in forfeiture of the SRC Producer's deposit or termination from the program. If Public Service terminates this Agreement under this paragraph, it shall have no further financial or other obligation to SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(C) Should at any time during the Term of this agreement the PV System Owner, SRC Producer and their affiliated and parent companies own multiple PV systems on the same "site," and the total capacity of such PV systems exceeds 2 MW, Company may, after sixty (60) Days notice and in its sole discretion, terminate this

Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.2 shall not apply to an event of default under this paragraph.

(D) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 Days after notice thereof shall have been given by the non-defaulting Party.

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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the

PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the taxable consequences, if any, to SRC Producer with respect to the production and sale of Photovoltaic Energy or RECs, and SRC Producer is urged to seek professional advice regarding this issue.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer's administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

## ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent, acceptable to Company, to assignment to any of SRC Producer's requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy  
Attn: Solar\*Rewards  
414 Nicollet Mall, 6<sup>th</sup> Floor  
Minneapolis MN 55401  
Fax: 1.800.252.4371

If to SRC Producer:

San Luis Solar Garden LLC  
1120 Pearl St. Suite 200  
Boulder, CO 80302

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from SRC Producer,

and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

**SRC Producer**  
**SRC Producer Name (printed):** San Luis Solar Garden LLC

**SRC Producer Representative:** Eric Blank  
**Title:** Manager

**SRC Producer Signature:**  **Date:** 4/7/2017

**Public Service Company of Colorado d/b/a Xcel Energy**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
As authorized agent for  
Public Service Company of Colorado

**PV System Owner (if different from SRC Producer)**  
**PV System Owner Name (printed):** \_\_\_\_\_

**PV System Owner Representative:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**PV System Owner Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Exhibit A  
to  
Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

San Luis Solar Garden LLC  
Community Solar Garden Photovoltaic System  
Antonito, CO  
LAT/LONG: 37.06°,-106.03°



**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

**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.

21. 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.

22. 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.

23. 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.

24. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (b) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

6. 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.

7. 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**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SRC PRODUCER**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit C  
 to  
 Construction Milestones**

DATE		RESULTS ACHIEVED
	1	SRC Producer shall have submitted post bid information (10 subscribers, deposit, and low income subscriber summary).
	2	The SRC Producer Agreement has been executed.
	3	SRC Producer shall have received site acquisition/control.
	4	Site Survey and soils report
	5	SRC Producer shall have obtained all variance allowances and planning approval.
	6	SRC Producer shall have obtained all required permits.
	7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
	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 Facility.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer shall have started garden construction.
	11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
	12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
	13	SRC Producer 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	SRC Producer shall have completed the project within 18 months from initial application approval.

**Solar\*Rewards Community Producer Agreement**  
**Solar\*Rewards Community Photovoltaic (PV) Systems**  
**For SRC Producers**

O87

This Agreement is made and entered into this \_\_\_\_ day of August, 2017, 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 Denver Metro Solar LLC ("SRC Producer"), a limited liability corporation, whose business address is 777 Grant St., Denver, CO 80203, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

**RECITALS:**

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltaic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (DC) nameplate capacity of 1,999.690 kW.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS**

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.

1.2. "Common Ownership" shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.3 "Date of Commercial Operation" shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.4 "Electric Tariffs" shall mean Public Service's electric tariffs as in effect and on file with the Commission from time to time.



1.5 “Force Majeure” shall have the meaning as set forth in Section 6.1 of this Agreement.

1.6 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.7 “Interconnection Agreement” shall mean the separate agreement to be entered into between SRC Producer and Public Service providing the terms and conditions by which SRC Producer may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.8 “Low-Income Customer” shall mean, consistent with Section 40-3-106, C.R.S., that a customer be at or below 185% of the Federal Poverty Line.

1.9 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.6 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.10 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity, including any and all associated RECs, delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.11 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.1 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possession from SRC Producer to Public Service.

1.12 “Production Month” shall mean the calendar month during which Photovoltaic Energy is produced by the PV System and delivered to Public Service at the Production Meter.

1.13 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy subject to this Agreement.

1.14 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System. If the PV System Owner is the same entity as SRC Producer, then Section 3.2 hereof shall not be applicable.

1.15 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652(t). In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.16. “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.17 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement.

1.18 “Solar\*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar\*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$300 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in the 2017 and future contract cycle with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with this SRC Producer Agreement.



1.19 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.6 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.20 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs

1.21 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.22 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.23 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.24 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

## **ARTICLE II**

### **TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS**

2.1 Sale and Delivery of Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.



(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy produced by the PV System shall be the full responsibility of the SRC Producer

2.2 Delivery of RECs Associated with Photovoltaic Energy. Effective upon the Date of Commercial Operation, all of the RECs attributable to all Photovoltaic Energy produced by the PV System attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month, shall be delivered to Public Service at the Production Meter.

2.3 Positive REC Price and REC Payments to SRC Producer. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. Public Service shall pay SRC Producer the price of \$58.00 per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

2.5 Negative REC Price and Payment(s) to Public Service. The amount to be paid by SRC Producer to Public Service shall be expressed in dollars per megawatt-hour (MWh), SRC Producer shall pay Public Service the price of \_\_\_\_\_ per MWh of energy generated by the PV system for the subscribed portion of Photovoltaic Energy recorded at the Production Meter. Payments shall be made by check to Public Service by SRC Producer. Such payments shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.4 Negative REC Price and Option for One-Time REC Payment to Public Service. If the REC price is negative Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ \_\_\_\_\_. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all Photovoltaic Energy output and/or the ability to transfer good and sufficient title of same to Public Service. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Public Service.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

### **ARTICLE III**

#### **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer represents and warrants as follows:

(a) SRC Producer is either the PV System Owner or is a subscriber organization organized under Section 40-2-127, C.R.S., and has been duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.



(b) SRC Producer has been duly authorized to sell and deliver to Public Service Photovoltaic Energy produced by the PV System on behalf of all SRC Subscribers having valid Subscriptions in the PV System, the purchase price and full consideration for which are the SRC Credits to be applied on the SRC Subscribers' electric service bills in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

(c) SRC Producer has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the PV System to Public Service on behalf of the PV System Owner, the SRC Subscribers and itself.

(d) SRC Producer has the right and authority to sell all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter.

3.2 If the PV System Owner and the SRC Producer are not the same person, then the undersigned PV System Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes SRC Producer to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions. The conditions set forth in the following subparagraphs (a) through (f) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of such conditions. For purposes of this Agreement, the SRC Allocation for any SRC Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid SRC Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such SRC Allocation is changed by SRC Producer in a manner that satisfies all such conditions.

(a) No SRC Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) Unless the SRC Subscriber is an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, each Subscription shall be sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed

(based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premise served by Public Service and shall be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) At least 100 percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed shall not be the generation of electricity for retail or wholesale sale.

3.4 Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. Public Service shall have the right hereunder to refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during the period it is not in compliance with any of such conditions.

(a) The PV System shall have at least ten SRC Subscribers.

(b) The PV System shall have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System shall be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If, as the result of the official and valid action of any governmental body, the PV System is no longer located within Public Service's existing service territory, then Public Service shall also have the right to terminate this Agreement effective on or after the date the PV System is no longer located within Public Service's existing service territory, by providing ten (10) days advance written notice to SRC Producer.



(d) The location of CSGs may not result in more than 2 MWs of commonly owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for rural CSGs. In urban areas the distance between points of interconnection between commonly owned CSG will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System shall be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 False Representation. Any representation or warranty made by SRC Producer in this Agreement that shall prove to have been false or misleading in any material respect when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 hereof.

3.8 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

#### ARTICLE IV TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Agreement.

4.2 Project Development. Prior to the Commercial Operation Date, SRC Producer agrees to (i) submit semi-annual progress reports to Company including current status of each Construction Milestone any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project, (iii) Upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this agreement, *provided, however, that* Company shall comply with all of SRC Producer's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the Production Meter has been installed; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within sixty (60) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as a required deposit in connection with its application for the PV System under Public Service's Solar\*Rewards Community Program. If Commercial Operation is not achieved within 18 months of receiving an award, such deposit shall become non-refundable and forfeited by SRC Producer.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3665(d)(IV)(A) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3665, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.



4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged or destroyed, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to substantially its original specifications, tilt and orientation (or to such optimal design that is warranted at that time) at the SRC Producer's sole expense. If such damage or repair results in complete shutdown of the PV System, all of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy or RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement of such entire PV System 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 fully 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.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (e.g., account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any low-income subscriber meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the



requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. In the event Public Service discovers through a credible source that the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. In the event Public Service discovers through a credible source that the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Once Commercial Operation has been obtained, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Semi-annual Progress Reports. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service. Progress reports are no longer required once the garden has obtained commercial operation.



4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

## **ARTICLE V**

### **PRODUCTION METER AND INTERCONNECTION**

5.1 Construction Timelines. The SRC Producer will have 18 months to bring the PV System to commercial operation. If the PV System has not achieved this status within 18 months, the deposit associated with the PV System will be forfeited to the Renewable Energy Standard Account. If, after 24 months the PV System has not been brought to commercial operation, the application will be canceled on the first day of the 25<sup>th</sup> month with any associated capacity forfeited.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.2 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. The cost of the Trip Charges hereunder shall be deducted from the SRC Producer's REC incentive payment for the corresponding month.

5.5 Interconnection Agreement. The Parties recognize that SRC Producer and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3667, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.5. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

## **ARTICLE VI** **FORCE MAJEURE**

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across



the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force

Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy or RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the Customer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

## **ARTICLE VII**

### **DEFAULT, REMEDIES AND DISPUTE RESOLUTION**

7.1 Events of default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below:

(A) PV System Owner and SRC Producer fail at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days' notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

(B) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 Days after notice thereof shall have been given by the non-defaulting Party (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.)

7.2 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 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.

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.

## **ARTICLE VIII**

### **LIABILITY AND INDEMNIFICATION**

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the taxable consequences, if any, to SRC Producer with respect to the production and sale of Photovoltaic Energy or RECs, and SRC Producer is urged to seek professional advice regarding this issue.

## **ARTICLE IX**

### **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next

following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Cooperation on Disputes /Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Public Service hereby recognizes that SRC Producer, and any subsequently approved assignee of SRC Producer, as quasi-municipal entities are subject to certain unique laws, policies and procedures (i) which may give rise to unforeseen issues or circumstances affecting their ability to perform under this Agreement; and (ii) which may require cooperation, consultation, and interactive discussion with Public Service in order to resolve any disputes arising therefrom. Public Service agrees to use best efforts to work with SRC Provider and any subsequently approved assignee affiliate or instrumentality of SRC Producer in resolving such disputes arising from any matters relating to this Agreement, Should such cooperative efforts fail to resolve any dispute arising under this Agreement, venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by SRC



Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent, acceptable to Company, to assignment to any of SRC Producer's requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion..

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand,

sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy  
Attn: Solar\*Rewards Community  
1800 Larimer St, 15<sup>th</sup> Floor  
Denver, CO 80202  
Fax: 1.800.252.4371

If to SRC Producer:

Chris Jedd  
Portfolio Energy Manager  
Housing Authority of the City and County of Denver  
777 Grant Street, 6<sup>th</sup> Floor  
Denver, Colorado 80203

With a copy to:

Joshua Crawley, Esq.  
Agency Counsel  
Housing Authority of the City and County of Denver  
777 Grant Street, 6<sup>th</sup> Floor  
Denver, Colorado 80203

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from SRC Producer, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.


**SRC Producer**

SRC Producer Name (printed): Denver Metro Solar, LLC

9/12/2016



SRC Producer Representative: ISMAEL GUERRERO  
Title: \_\_\_\_\_

SRC Producer Signature:  Date: 8/21/17

Public Service Company of Colorado d/b/a Xcel Energy

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
As authorized agent for  
Public Service Company of Colorado

PV System Owner (if different from SRC Producer)  
PV System Owner Name (printed): \_\_\_\_\_

PV System Owner Representative: \_\_\_\_\_  
Title: \_\_\_\_\_

PV System Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit A**  
  
**to**  
**Solar\*Rewards Community Agreement**

***DESCRIPTION OF SOLAR GARDEN SITE:***

See sit details in solar rewards portal

Solar Garden Number SRC053962

**Exhibit B**  
**to**  
**Solar\*Rewards Community Agreement**

**SRC SUBSCRIBER AGENCY AGREEMENT  
FOR XCEL ENERGY SOLAR\*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: \_\_\_\_\_

SRC Subscriber Retail Customer Account No.: \_\_\_\_\_

SRC Subscriber Service Address: \_\_\_\_\_  
\_\_\_\_\_

SRC Subscriber E-mail Address: \_\_\_\_\_

SRC Subscriber Mailing Address: \_\_\_\_\_

SRC Subscriber Telephone No: \_\_\_\_\_(Primary) \_\_\_\_\_(Alt.)

SRC Producer (Subscriber Organization) Name: \_\_\_\_\_

Solar Garden ID No: \_\_\_\_\_

Name and Location of Solar Garden: \_\_\_\_\_  
\_\_\_\_\_

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_ kW

The undersigned SRC Subscriber hereby authorizes \_\_\_\_\_ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar\*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously



applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (b) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

**SRC SUBSCRIBER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SRC PRODUCER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit C to Construction Milestones

DATE		RESULTS ACHIEVED
4/17/2017	1	Respondent shall have submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
4/17/2017	2	Respondent has executed the SRC Producer Agreement.
3/7/2017	3	Respondent shall have received site acquisition/control.
4/1/2017	4	Respondent obtains site survey and soils report
4/17/2017	5	Respondent shall have obtained all variance allowances and planning approval.
8/11/2017	6	Respondent shall have obtained all required permits.
8/31/2017	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.
8/31/2017	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.
8/11/2017	9	Respondent and all required counterparties have executed the Interconnection Agreement.
9/04/2017	10	Respondent shall have started garden construction.
11/15/2018	11	Respondent shall provide Public Service with copies of applicable inspection reports for the proposed CSG.
12/1/2017	12	Respondent shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
12/15/2017	13	Respondent shall have made the Interconnection of the CSG generating facility and is capable of being energized.
12/15/2017	14	Commercial Operation has been achieved and the date duly recorded.
12/15/2018	15	All other requisite SRC application documentation is on file
12/31/2017	16	Respondent completes proposed CSG within 18 months of receiving an award.

# Attachment I

CSG #	CSG Owner	Product/Service Name
-------	-----------	----------------------

**Table 2: Production Breakdown - Subscribed by C&G and Rate Class as of December 31, 2017**

<sup>\*\*\*</sup> Due to rounding the sum of SRC production for the respective customer classes may be different from the garden level data



# Attachment J



# Colorado Energy Office Solar for Low-income and the Weatherization Assistance Program

Report to the Colorado Public Utilities Commission

As submitted in Public Service Company of Colorado 2017 RES  
Compliance Report in accordance with the Comprehensive Settlement  
Agreement  
Proceeding Nos 16AL-0048E; 16A-005E; 16A-0139E

Report  
May 14, 2018

## Settlement Overview and Background

On August 15, 2016, twenty six parties (Including CEO) recommended to The Colorado Public Utilities Commission the Decision to issue the Non-Unanimous Comprehensive [Settlement Proceeding No. 16AL-0048E](#). The Settlement Agreement resolved all issues raised in three pending proceedings initiated by the Public Service Company of Colorado: Proceeding No. 16AL-0048E, No. 16A-0055E and Proceeding No. 16A-0139E. Twenty six parties intervened, many on behalf of low-income rate payers. Proceeding No. 16A-0139E focused on the Company's 2017-2019 Renewable Energy Plan. Section VI, states that Public Service will partner with CEO to create a low-income rooftop solar offering. The objectives of the initiative are to: (1) reduce participating low-income customers' bills, thereby decreasing their electric energy cost burden; and (2) increase access to distributed generation for customers that currently have limited opportunity to utilize existing voluntary renewable programs.<sup>1</sup>

The settlement directed CEO to install solar for low-income through its established weatherization plan, a state agency that manages the weatherization of approximately 3,500 to 4,000 homes annually. The CEO has worked with United States Department of Energy ("DOE") to add solar PV installations to its Weatherization program and to allow the energy efficiency agency to prioritize on customer electric cost savings through the installation of solar PV panels. Utilizing The Settlement as a contract, the utility will,

- Issue a rebate for \$2.00/watt for new solar kilowatts installed, and
- A production credit of its existing weatherization or solar installation partners to install rooftop solar PV on qualified low-income-occupied dwellings located within the Company's service area as part of a package that includes both solar and weatherization measures.

CEO has funded the initial installation of the solar PV system using:

- a. Up to \$3,545 per home of DOE funds to offset the cost of the solar PV system, per the [Weatherization Program Notice 024](#). On April 3, 2018 CEO received an email notice that the cost of living adjustment to DOE and federal funding amount per home for 2018/19 is \$3,623. Appendix C of this report demonstrates how every

<sup>1</sup> The PUC Settlement Proceeding No. 16AL-0048E, No 16 a-0055E and No. 16A-0139E, 8/15/2016

year the DOE adjust their allowable per unit averages in accordance with [10 CFR Part 440.18](#)(b) and (c), the expenditure of financial assistance provided under WAP for labor, weatherization materials, and related matters for a renewable energy system, shall not exceed an average of \$3,000 per dwelling unit, as adjusted. The percentage increase in the CPI for the previous 12-month period (October 2016 - September 2017) was 2.2%. Therefore, the PY 2018 adjusted average for renewable energy measures is \$3,623 for renewable energy system measures with a SIR greater than 1.

b. Public Service provides an upfront incentive of \$2.00 per installed watt to offset the remaining costs of the solar PV system. These incentives will be paid from the Renewable Energy Standard Adjustment (“RESA”).

c. Public Service also provides a production-based incentive equal to \$0.034/kWh for the electricity generated by the PV system. Energy From inception through December 31, 2017, approximately \$58.51 has been generated from the production credit.

d. Net metering credits are also used to offset the low-income customers’ electricity bill in accordance with Commission Rule 3664.

## Eligibility

CEO has analyzed participation metrics to ensure that participating premises are low-income homes with a high probability of remaining low-income occupied for the useful life of the PV system, and where low-income inhabitants will reap the highest benefits from an on-site solar PV system. Weatherization clients sign a statement that they are not selling their home within a year. The statutes of the weatherization program require that the WAP serve renters and owners, as does The Settlement. Aside from targeting and identifying home owners, CEO is restricted to the Public Service customers in Colorado.

Weatherization Region Provider	Counties Served	Public Service % of Jobs Historically Served by Weatherization
1-Northeast	Morgan, Logan, Washington, Sedgwick, Phillips, Yuma	11%
4 -South West	Mesa, Delta, Montrose, Ouray, San Miguel, Gunnison, Hinsdale, La Plata, Delores, Montezuma, San Juan, Archuleta	16%

5 -North West	Chaffee, Clear Creek, Eagle, Grand, Jackson, Lake Park, Routt, Summit, Garfield, Moffat, Rio Blanco, Pitkin	17%
8 -Metro and Central-south	Denver, Jefferson, Douglas, El Paso, Elbert, Teller, Fremont, Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache, Lincoln, Kit Carson, Cheyenne	19%
7 -Metro	Arapahoe and Adams	25%
6 -North Metro	Weld, Boulder, Broomfield, Larimer, Gilpin	37%

From the populations above, the following are the parameters for selecting weatherization eligible solar homes:

- A preference for non-profit or housing authority owned low-income properties with long-term agreements to serve low-income customers;

*CEO has provided solar PV to 12 units of housing provided by the Boulder County Housing Authority (BCHA). The homes are three and four-plex units, and are continually occupied by low-income at or below 60% of the area medium income. The BCHA property is specifically designated for low-income and will remain so indefinitely, as it has for the last 30 years. BCHA's mission is to provide housing in a high cost housing market, and the property is in excellent condition. The units are well maintained, and are 100% occupied by low-income. There is not a document stating the units will remain as are, but Xcel Energy can verify the BCHA plans and mission by contacting the BCHA at <https://www.bouldercounty.org/departments/housing-and-human-services/>*

- Homes with high electric costs, especially homes that heat with electricity.

*CEO targets high use electric homes to increase customer cost electrical savings. NREL's PV watts tool is used to achieve an estimated 50% credit from the solar PV panels.*

- Customers with high average electricity use;

*CEO is working with our multi-family weatherization provider to locate weatherization-eligible multifamily structures that can benefit from solar PV.*

The eligibility income guidelines for the 2017/18 weatherization solar program:

Number of Household Members	Gross Annual Household Income*
1	\$24,120.00
2	\$32,480.00
3	\$40,840.00
4	\$49,200.00
5	\$57,560.00
6	\$65,920.00
7	\$74,280.00
8	\$82,640.00

## Client Energy Solar Savings

Through December 31, 2017 the total number of rooftop solar PV systems installed for low-income was 43. Of these, 12 units were installed by BCHA. The RESA rebate amounts for the BCHA units were \$62,372. The RESA rebate amounts for the 31 homeowner units was \$190,128, for a total amount of \$252,500. The average RESA contribution was \$5,872 for 2017. The average LEAP or DOE (Federal) contribution was \$3,545 for 2017. The name plate capacity of the installs is 126.25 kilowatts. The NREL Savings to Investment (SIR) calculator for Colorado of is 1.14.<sup>2</sup> CEO and Xcel inputs in the SIR calculator are an average system size cost of \$3.21, an electrical rate of \$0.11 per kilowatt, and an average system size of 2.88. Since recording the SIR for each unit is not a requirement of the report, instead please see the [DOE policy Weatherization Program Notice WPN-024](#) that requires each unit have an SIR of 1.

Appendix A lists all zip codes receiving solar systems and other customer information.

Solar PV systems are installed on dwellings where 100% of the units are also receiving all weatherization cost-effective weatherization measures. Solar is an additional tool to decrease a low-income customer's bill. CEO targets homes with maximum customer cost savings potential. In 2014 CEO set a goal that 38% of the units weatherized across the state would take three to four major weatherization measures such as attic and wall insulation, air sealing, a new furnace, and now solar. CEO will work with its qualifying partners to ensure that participating homes meet all eligibility requirements, and will only install rooftop solar

<sup>2</sup> The NREL WAP SIR calculator: <http://www.nrel.gov/solar/assets/docs/sir.xlsx>

PV systems at low-income homes where the savings to investment ratio ("SIR") meets DOE requirements of "one". The PV watts modeling is in the client file for each solar installation, and typically shows an annual electrical offset of 50% for the maximum system size system of 3.5 kilowatts. All solar PV systems installed must yield a weighted average generation capacity factor of at least fourteen (14) percent.

CEO will do a data request after June 30, 2018, to measure the client usage since receiving solar energy systems thanks to Xcel. This savings data will be reported to Xcel Energy as soon as it is available.

## Production Schedule

The settlement states the solar program will be scaled up over three years for no more than a total of 300 systems. "In year one no more than seventy-five (75) systems will be installed; in year two 100 systems will be installed, and in year three 125 systems may be installed." Year one was marked as 2017, and CEO had approximately 61 solar systems installed, but interconnection had not occurred on a majority of systems. CEO assumed production would be above 75 by December 31, 2017, but some of the following delays:

- The agency network development of the Request for Approval and following agency procurement processes took longer than expected.
- The revenue contract between the CEO and Public Service resulted in delays.
- The typical timeframe for solar interconnection is between 30 to 60 days. This makes it challenging to finish solar jobs within the time frame allowed, through December 31<sup>st</sup>, 2019.
- The agencies ran into a large number of inadequate electric panels and roofs that prevented otherwise ideal solar candidates from receiving systems. CEO and Public Service will phase-in this three-year project. CEO and the Public Service will assess the performance at the end of years one and two against pre-determined criteria. If the program achieves the thresholds in those criteria, the project will continue into the next year.

The production schedule CEO is proposing outlines adjusted production to ensure that 300 units have engineering approval by December 31, 2019. The schedule is divided into

weatherization regions that serve the entire state based on Xcel Energy eligible electric clients.

Solar Units	2017/18	2018/19	2019	Total
R11 -Energy Outreach Colorado (Multifamily)			10	10
R4 Housing Resources of Western CO	1	15	3	19
R5 Northwest Colorado Council of Governments	1	4	0	5
R6 Energy Resource Center North	18	42	15	75
R7 Arapahoe & Adams County	50	39	8	97
R8 Energy Resource Center South	30	50	14	94
Total	100	150	50	300

To tackle previous production barriers, CEO is preparing a grant to upgrade client electrical panels, and add to roof repairs or partial roof replacement in order to maximize eligible solar PV clients. Arapahoe County estimated it had 20 homes in 2017 that would have been excellent solar candidates aside from the inadequate electrical panels, needing upgrades in the range of \$2,500 to \$3,500. Not as many clients were rejected due to poor roofs. Weatherization can pay up to \$500 per home to fortify the roof for solar so CEO will pursue some funds to make homes solar ready.

## Future Changes

Now that the program is underway, adjustments are being enacted to streamline operations. Solar has been fully integrated as a regular weatherization installation, and crews are fully trained on solar identification and integration into the energy audit. Now the work order process is streamlined, and relationships with solar installers are established, and entering information into the Public Service's Salesforce Portal is becoming swift. Interconnection times should increase since the beginning of the solar installations, and CEO is hoping to see a consistent interconnection time of 20 working days after the meter is installed. For the future program years, CEO hopes to see four agencies secure prices of less than \$3.00/watt, but currently it is running at \$3.21/watt.

A protocol for account holders of housing authorities or non-profit affordable housing providers will need to be established to account for change in tenants as the production



credit is issued for 20 years after solar is interconnected. Xcel Energy is working on a new interconnection agreement or an Assignment of Contract for affordable housing tenants.

Monthly production credit statements are being paper mailed to CEO, individually for each home. Separately, monthly production credit checks are sent, some in larger bundles of two to ten, once per month. Efforts are being made to create e-bill statements for each account, yet this process continues to be a barrier in efficiency for both CEO and Public Service. CEO understands the small separate monthly checks cannot be sent in one bulk check per month.

The 2018/19 program year begins July 1 to June 30th. This will be the heaviest solar production year with 150 low-income homes receiving solar, but CEO is confident that the weatherization network is excited to be installing solar, and we have an accelerated production plan in place.

**For more information regarding this report, please contact:**

**Amy Hollander**

**Sr. Program Manager, Weatherization**

Colorado Energy Office

1580 Logan Street, Suite 100

Denver, CO 80203

(303) 866-2262

[Amy.Hollander@state.co.us](mailto:Amy.Hollander@state.co.us)

Opportunity #	Created Date	Engineering Approval Date	System Size (kW)	Premise City	Zip Code	Annual Modeled kWh Production
OID3083364	7/31/2017	8/29/2017 13:35	3.25	Aurora	80013	4,156.00
OID3083589	7/31/2017	8/23/2017 15:06	3.3	Aurora	80013	4,523.00
OID3099188	8/9/2017	11/6/2017 7:38	3.3	Thornton	80229	4,793.00
OID3099228	8/9/2017	9/6/2017 14:15	2.4	Commerce City	80022	3,267.00
OID3100059	8/10/2017	9/5/2017 15:11	3.3	Thornton	80241	4,449.00
OID3103977	8/16/2017	9/7/2017 10:42	2.1	Denver	80221	2,812.00
OID3106885	8/18/2017	9/7/2017 13:59	3.3	Aurora	80010	4,953.00
OID3115421	8/22/2017	9/25/2017 9:29	3.3	Aurora	80015	4,520.00
OID3122608	8/28/2017	9/7/2017 14:19	2.1	Northglenn	80233	3,030.00
OID3125422	8/31/2017	9/20/2017 11:08	2.16	Aurora	80013	3,060.00
OID3126062	8/31/2017	9/20/2017 11:40	3.18	AURORA	80017	4,715.00
OID3126063	8/31/2017	9/20/2017 11:12	2.65	THORNTON	80229	3,593.00
OID3126075	9/1/2017	9/20/2017 11:00	3.445	AURORA	80011	5,066.00
OID3126496	9/1/2017	9/20/2017 11:26	3.445	AURORA	80013	5,219.00
OID3131576	9/6/2017	9/22/2017 12:02	3.3	Aurora	80013	5,077.00
OID3131641	9/6/2017	9/22/2017 12:27	3.3	Thornton	80602	4,906.00
OID3143397	9/18/2017	10/24/2017 10:18	3.3	Thornton	80602	4,142.00
OID3145195	9/19/2017	11/9/2017 7:39	3.18	THORNTON	80241	4,689.00
OID3152514	9/27/2017	10/13/2017 8:18	3.18	Denver	80229	4,570.00
OID3162999	10/3/2017	10/19/2017 8:54	3.18	AURORA	80011	4,715.00
OID3163008	10/3/2017	10/18/2017 7:59	3.24	AURORA	80015	4,650.00
OID3173914	10/13/2017	10/26/2017 11:00	3.3	Thornton	80241	4,980.00
OID3190906	10/25/2017	11/21/2017 10:54	2.6	Lakewood	80232	3,266.00
OID3204603	11/2/2017	11/29/2017 9:58	3.36	Denver	80239	4,568.00
OID3204606	11/2/2017	11/29/2017 8:59	2.52	Arvada	80002	3,165.00
OID3204608	11/2/2017	11/29/2017 8:50	1.96	Denver	80239	2,942.00
OID3207913	11/6/2017	11/30/2017 15:01	2.1	Englewood	80110	3,030.00
OID3209046	11/7/2017	12/18/2017 9:29	3.42	Aurora	80013	5,080.00
OID3228416	11/23/2017	12/29/2017 7:38	1.855	BOULDER	80301	2,515.00
OID3228418	11/23/2017	12/29/2017 7:54	2.24	BOULDER	80301	3,038.00
OID3229200	11/25/2017	12/29/2017 8:12	1.96	BOULDER	80301	2,748.00
OID3229201	11/25/2017	12/29/2017 8:07	2.8	BOULDER	80301	3,926.00
OID3229202	11/25/2017	12/29/2017 8:33	3.36	BOULDER	80301	4,556.00
OID3229203	11/25/2017	12/15/2017 9:09	3.36	BOULDER	80301	4,556.00
OID3229204	11/25/2017	12/15/2017 9:16	3.36	BOULDER	80301	4,556.00
OID3229205	11/25/2017	12/21/2017 7:58	2.8	BOULDER	80301	3,926.00
OID3229207	11/25/2017	12/29/2017 8:21	2.8	BOULDER	80301	3,926.00
OID3229208	11/25/2017	12/15/2017 9:24	3.36	BOULDER	80301	4,711.00
OID3229209	11/25/2017	12/15/2017 9:32	3.36	BOULDER	80301	4,711.00

OID3229908	11/27/2017	12/29/2017 9:05	3.445	DENVER	80221	4,942.00
OID3231012	11/28/2017	12/22/2017 8:10	3	Thornton	80229	4,462.00
OID3237950	12/5/2017	12/22/2017 9:35	3.42	Aurora	80013	4,731.00
OID3228417	11/23/2017	12/29/2017 7:47	1.96	BOULDER	80301	2,658.00
<b>Totals</b>			<b>126.25</b>			<b>177,898.00</b>
<b>Averages</b>			<b>2.88</b>			<b>4,083</b>

<b>Final Invoice Amount</b>	<b>RESA Rebate to CEO</b>	<b>Remaining CEO Cost after DOE/LEAP pays \$3545</b>
\$ 10,331	\$6,500	\$3,831
\$ 9,833	\$6,600	\$3,233
\$ 9,855	\$6,600	\$3,255
\$ 7,290	\$4,800	\$2,490
\$ 9,855	\$6,600	\$3,255
\$ 6,984	\$4,200	\$2,784
\$ 9,855	\$6,600	\$3,255
\$ 9,833	\$6,600	\$3,233
\$ 6,435	\$4,200	\$2,235
\$ 8,027	\$4,320	\$3,707
\$ 10,797	\$6,360	\$4,437
\$ 8,660	\$5,300	\$3,360
\$ 12,066	\$6,890	\$5,176
\$ 11,957	\$6,890	\$5,067
\$ 9,833	\$6,600	\$3,233
\$ 9,854	\$6,600	\$3,254
\$ 9,854	\$6,600	\$3,254
\$ 10,657	\$6,360	\$4,297
\$ 10,422	\$6,360	\$4,062
\$ 10,660	\$6,360	\$4,300
\$ 10,834	\$6,480	\$4,354
\$ 9,854	\$6,600	\$3,254
\$ 5,622	\$5,200	\$422
\$ 8,400	\$6,720	\$1,680
\$ 6,300	\$5,040	\$1,260
\$ 5,385	\$3,920	\$1,465
\$ 6,413	\$4,200	\$2,213
\$ 11,006	\$6,840	\$4,166
\$ 6,950	\$3,710	\$3,240
\$ 7,766	\$4,480	\$3,286
\$ 6,954	\$3,920	\$3,034
\$ 9,390	\$5,600	\$3,790
\$ 11,014	\$6,720	\$4,294
\$ 11,014	\$6,720	\$4,294
\$ 11,014	\$6,720	\$4,294
\$ 9,390	\$5,600	\$3,790
\$ 9,690	\$5,600	\$4,090
\$ 11,014	\$6,720	\$4,294
\$ 11,014	\$6,720	\$4,294

\$	11,241	\$6,890	\$4,351
\$	9,020	\$6,000	\$3,020
\$	11,006	\$6,840	\$4,166
\$	6,950	\$3,920	\$3,030
<b>\$</b>	<b>400,298</b>	<b>\$ 252,500</b>	<b>\$ 252,500</b>
	<b>\$9,259</b>	<b>\$14,063</b>	<b>\$3,437</b>

## Appendix B

Forwarded message -----

From: **Burrin, Erica** <[Erica.Burrin@ee.doe.gov](mailto:Erica.Burrin@ee.doe.gov)>

Date: Tue, Apr 3, 2018 at 1:52 PM

Subject: FW: Weatherization and Solar PV - amount allowed.

To: "[amy.Hollander@state.co.us](mailto:amy.Hollander@state.co.us)" <[amy.Hollander@state.co.us](mailto:amy.Hollander@state.co.us)>

Cc: "Jiacoletti, Paul" <[Paul.Jiacoletti@ee.doe.gov](mailto:Paul.Jiacoletti@ee.doe.gov)>, "Laymon, Krystal" <[Krystal.Laymon@ee.doe.gov](mailto:Krystal.Laymon@ee.doe.gov)>

Amy,

The updated numbers for renewable technologies are listed in the WPN XX-1, each year. WPN 18-1 states:

### 1.1.1 ADJUSTED AVERAGE COST PER DWELLING UNIT

The average cost per dwelling expenditure of financial assistance provided under WAP for labor, weatherization materials, and related matters cannot exceed \$6,500, as adjusted (see, [10 CFR §440.18](#)(a) and (c)). The adjusted annual average for PY 2018 is determined by using the percentage increase in the Consumer Price Index (CPI) (all items, United States city average) for FY 2017 or 3 percent, whichever is less. The percentage increase in the CPI for the previous 12-month period (October 2016 – September 2017) was 2.2. Therefore, the adjusted average expenditure limit for PY 2018 is **\$7,261. This average includes units computed in a multifamily building of 5 units or greater.**

In accordance with [10 CFR Part 440.18](#)(b) and (c), the expenditure of financial assistance provided under WAP for labor, weatherization materials, and related matters for a renewable energy system, shall not exceed an average of \$3,000 per dwelling unit, as adjusted. The percentage increase in the CPI for the previous 12-month period (October 2016 – September 2017) was 2.2%. Therefore, the PY 2018 adjusted average for renewable energy measures is **\$3,623 for renewable energy system measures with a SIR greater than 1.**

**Note: The adjusted average for renewable energy measures is not a separate average, but part of the overall adjusted average expenditure limit of \$7,261. Currently Appendix A allows for use of solar (thermal) water heating systems. Some states have been granted approval for installation of solar photovoltaics when they have submitted it as part of their Grantee Plan, received approval from the DOE Contracting Officer after a NEPA determination was made, (which required the state to submit an EQ-1), and amended their 5-year DOE-approved energy audit process.**

Erica Burrin  
Managing Team Lead  
Weatherization Assistance Program  
[1000 Independence Ave, SW](#), MS 5W  
Washington, DC 20585  
[Erica.burrin@ee.doe.gov](mailto:Erica.burrin@ee.doe.gov)  
202.280.9863



# Attachment K



## **I. Introduction & Requirements**

As part of the Comprehensive Settlement Agreement (Proceeding No. 16AL-0048E), the settling parties agreed that complex issues in the proceeding would be best addressed through ongoing stakeholder participation. The Stakeholder Groups are designed to identify and address issues leading to additional actions in support of the Comprehensive Settlement Agreement, including actions which may require approval of the Commission prior to the next scheduled proceeding in the matter.<sup>1</sup>

The following Stakeholder Groups were formed: Distribution Grid and Interconnection (“Grid”) Stakeholder Group; Future Voluntary Renewable Programs (“Future Programs”) Stakeholder Group; and Existing Voluntary Renewable Programs (“Existing Programs”) Stakeholder Group. The Stakeholder Groups have the following requirements:

- Meet on a quarterly basis.<sup>2</sup>
- Meeting minutes and progress will be posted publicly.
- The Company will provide notice of each meeting to intervening parties in the three Proceedings.
- Open the meeting agendas to suggestions from stakeholders.
- A section of the Company’s annual RES Compliance Report will include discussion items and outcomes summarized from the Stakeholder Groups (Pilot Stakeholder Group not included).

The Company initiated the Grid Stakeholder Group by reaching out to stakeholders in November 2016 and conducted a number of meetings prior to the Commission’s final Decision approving the Comprehensive Settlement Agreement. This was done in order to form the technical specifications needed to comply with a

---

<sup>1</sup> Attachment F to the Non-unanimous Comprehensive Settlement Agreement.

<sup>2</sup> Participants can collectively determine if semi-annual meetings are sufficiently frequent.

series of principles for customer-sited energy storage (batteries) as agreed to in the Comprehensive Settlement Agreement.<sup>3</sup> Over the following three months, Public Service convened a total of five meetings at its offices at 1800 Larimer Street with interested stakeholders to identify and resolve technical issues related to customer-sited electric storage interconnections.<sup>4</sup>

The regular quarterly meetings of the Stakeholder Groups commenced in 2017. The table below lists the dates when those meetings took place. Meeting materials including presentations, minutes/notes, and other supporting materials have been posted to the Company's web site following the conclusion of each meeting and can be found at:<sup>5</sup>

[https://www.xcelenergy.com/company/rates\\_and\\_regulations/stakeholder\\_group\\_meetings](https://www.xcelenergy.com/company/rates_and_regulations/stakeholder_group_meetings)

<b>Stakeholder Group:</b>	<b>Q4 2016</b>	<b>Q1 2017</b>	<b>Q2 2017</b>	<b>Q3 2017</b>	<b>Q4 2017</b>
<b>Grid</b>	11/03, 11/10, 12/02, 12/21	1/18, 3/17	6/27		
<b>Future Programs</b>		3/3	5/31, 9/8		
<b>Existing Programs</b>		2/3	4/7, 6/27		
<b>Combined<sup>6</sup></b>				09/22	12/15

There are two things to note from the table above. First, the Stakeholder Groups started to combine at the June 27 meeting where topics for the Grid and

<sup>3</sup> Non-unanimous Comprehensive Settlement Agreement, Pages 20-21.

<sup>4</sup> A complete report of this activity was filed by the Company on January 31, 2017.

<sup>5</sup> The Company has retained sign-in sheets from each Stakeholder Group listing participants but has not disclosed those on its web site.

Existing Programs were discussed. By the end of 2017 all Stakeholder Groups were joined into Combined Stakeholder Group meetings. This is the current state of how these meetings are operating today, in 2018, as a result of a desire to be more efficient. Many of the topics cross the boundaries of the groups and many of the interested stakeholders are the same.

Second, is the ability to host additional meetings due to special topics or issues being of a technical or specific nature. This was the reason behind the September 9 meeting where a small group of interested stakeholders specifically discussed avoided energy cost modeling. The Company has hosted more of these sorts of meetings in 2018, and will continue to do so if necessary.

Stakeholder Group meetings have always been initiated with notice of the meeting date and time to a distribution list that was originally based upon the service list in Proceedings that resulted in the Comprehensive Settlement Agreement. The distribution list has evolved as parties have left positions or have asked to be removed from the list, and as invitations have been sent to additional parties who would benefit from engaging in the conversation. In addition, before each meeting the Company does solicit agenda items from stakeholders and includes any special topics or presenters that stakeholders feel would be beneficial to particular meetings. In addition, before each meeting, the Company solicits agenda items from stakeholders and includes any special topics or presenters that stakeholders feel would be beneficial to particular meetings. 2017 meetings have contained both such elements in their agendas.



## **II. Stakeholder Group Meetings – Discussion Items and Summary of Outcomes**

This section summarizes the discussion items and outcomes from the various Stakeholder Group meetings that were held in 2017. This is organized by Stakeholder Group and includes tables that will feature the topics to be discussed (as detailed in Attachment F to the Comprehensive Settlement Agreement), the date of the Stakeholder Group meeting where that topic was discussed, and a brief summary of the outcomes from those discussions. Should the reader want more detail, all presentations and meeting materials can be found on the Stakeholder Group web site.

### **A. Grid Stakeholder Group**

The Grid Stakeholder Group's focus for 2017 has been on energy storage (batteries) and grid information for interconnections (hosting capacity). 2017 was a productive year in which the Company, with stakeholder input, effectuated the energy storage principles outlined in the Comprehensive Settlement Agreement and produced a series of technical Guidance Documents with a variety of configurations. Configurations that developers/customers could choose that best fits their standalone battery needs or ones that will operate in parallel with the grid and best fits with their existing or new on-site solar system.

By early 2017, the Company had these Guidance Documents posted to its external web site and the necessary tariff changes approved in order to begin accepting applications. Since adding batteries to customers' premises is not a "plug and play" technology, the Company has continued to work directly with developers as well as manufacturers to help with deployment and compliance with settlement

principles. The Company even hosted a stakeholder sub-group meeting on March 29, 2018, to help address developers questions and concerns about battery interconnections and the application process. 2017 was the start to the deployment of this new technology in the Company's service territory with 215 applications in various stages from approval to completion. 2018 may be viewed as the start to the expansion.

Hosting capacity has been a frequent topic in the stakeholder group meetings. Early on, the Company had indicated that it would be following in the footsteps of its work in Minnesota to develop heat maps (a.k.a. red-light, green-light maps or studies). The work to develop these maps is very data intensive and requires many labor hours to produce. As in interim step the Company produced Minimum Daytime Load Study Tables and associated substation location maps that could assist developers looking to site mainly Community Solar Gardens (CSGs). This was done in 2017 with the full heat maps being published by Q2 2018.

The table below provides a more high-level summary of the stated topics of the Grid Stakeholder Group the dates which those topics were discussed and a summary of the outcomes.

<b>Topics:</b>	<b>Stakeholder Group Dates</b>	<b>Summary of Outcomes:</b>
<b>Customer-sited Energy Storage (Batteries) Interconnections</b>	<b>2016:</b> 11/3, 11/10, 12/2, 12/21 <b>2017:</b> 1/18, 9/22	Through a total of five meetings Public Service with interested stakeholders identified and resolved numerous technical issues related to customer-sited electric storage interconnections. By early 2017 the stakeholder process resulted in the development of three technical Guidance Documents, with each Guidance Document effectuating one of the Settlement's energy storage principles. Each of these Guidance Documents presents multiple potential configurations for the installation of customer-sited storage; providing eight options in total for customer installation and operation of

Topics:	Stakeholder Group Dates	Summary of Outcomes:
		storage systems technology.
<b>Auxiliary Service:</b> The parties examined what rate class is most appropriate for customers that have a battery system installed behind the meter. The goal was to determine (1) if measurement of consumption and billing for customers with behind the meter storage should be unique; (2) if so, how; and, (3) if an auxiliary service tariff offering is necessary.	3/17	This topic was broached during the March 17 meeting. Participants believed that since Public Service had proposed Auxiliary Service in the Phase II Proceeding (Proceeding No. 16AL-0048E) that it is on the Company to make any new proposal and then broach again with Stakeholders.
<b>Interconnection Rules Evaluation:</b> The parties will examine if a request to modify Commission interconnection rules is necessary to incorporate newly developed technologies such as, but not limited to, batteries and smart inverters.	3/17	This topic was broached during the March 17 meeting with no real outcome other than a general discussion and discussion about other jurisdictions that are in the process of examining their interconnection rules (e.g. Minnesota).  With the current Miscellaneous Repository Proceeding (Proceeding No. 17M-0694E) the Small Generator Interconnection Procedures are a main topic where parties can comment and provide redlined rules for Staff's Consideration. It is to be determined how/if this topic will be discussed in the Stakeholder Meetings.
<b>Grid Information for Interconnection:</b> As part of the Settlement Agreement, the Company commits to developing a study to identify possible interconnection points on the system via a red-light, green-light type of demarcation as described in the section of the Settlement Agreement for the RE Plan Section II.c. This stakeholder group will address the Company's deliverables to effectuate this commitment.	3/17, 6/27, 9/22, 12/15	This topic has had regular discussion in the Grid and then Combined Stakeholder Groups. Public Service has informed stakeholders early on that it would be following its Minnesota utility in development of feeder heat (a.k.a. red-light, green-light) maps. Step one has been to build the Minimum Daytime Load Study Tables and then continue on with construction of the Heat Map which relies on heavy amounts of engineering data entry on the thousands of feeders in the Company's service territory. The Tables were available to stakeholders in 2017 with the heat maps targeted for Q2 2018.

## **B. Future Programs Stakeholder Group**

The Future Programs Stakeholder Group was formed with the goal to develop one or more programs that will allow customers to voluntarily contribute to meaningful carbon emission reductions from the Company's electric generation fleet.

The majority of the discussions for this group have been around the topic of avoided energy costs associated with the increasing interconnection of renewable generation. The Company has presented on the topic during a number of stakeholder meetings and held a technical meeting with interested stakeholders in an attempt to handle requests as best as possible. The discussion went beyond the Stakeholder Group process when Vote Solar filed its Petition for Declaratory Order on January 26, 2018. As of this writing, the Company and Vote Solar continue to work together on the issue.

The Company gathered thoughts and ideas around new programs and ideas of improving existing programs during 2017. There weren't any new programs or program modifications put forth during the year but the Company has listened and will continue to do so as further progress is made in these areas.

The table below provides a more high-level summary of the stated topics of the Future Programs Stakeholder Group the dates which those topics were discussed and a summary of the outcomes.

<b>Topics:</b>	<b>Stakeholder Group Dates</b>	<b>Summary of Outcomes:</b>
Appropriate bill credit or avoided cost calculation methodologies for various programs including, but not limited to, Renewable*Connect, Solar*Rewards, Solar*Rewards Community, and Net Metering. The discussion will include how and under what conditions different methodologies may apply. <sup>7</sup>	3/3, 5/31, 9/8, 9/22, 12/15	This is frequent topic of the Stakeholder Meetings and has had a fair amount of engagement with stakeholders. The Company has made various presentations and hosted a technical meeting on September 8 to specifically address concerns of parties. In the end particular parties wish to gain access to proprietary modeling inputs which has pushed this topic beyond the Stakeholder Group Meetings. The Company has expressed the

<sup>7</sup> At a minimum, the group will examine (1) the conditions under which gas turbine startup costs can be avoided, (2) the differences between avoided energy cost modeling and the costs recovered in the ECA, and (3)



Topics:	Stakeholder Group Dates	Summary of Outcomes:
		willingness to continue to provide analysis and information within certain limitations.
Improvements to Windsource® and Renewable*Connect.	3/3, 5/31, 9/22. 12/15	These topics have had certain limitations on their development in 2017 leading them to remaining more in the ideation phase of development. First, Renewable*Connect has had a delayed launch into Q2 2018. Prior to launch the Company does have some intelligence on demand, however real demand and reaction to the product launch will not be realized until mid-Summer 2018.
The possibility of combining the Windsource® and Renewable*Connect programs.		
Voluntary contributions toward early retirement of existing fossil fuel generation facilities.		
Program marketing to include descriptions of subscription-supported generation facilities.		
Opportunities for other programs/ideas, such as the viability of longer term potential for provision of ancillary services from distributed energy resources and the use of combined distributed energy resources (DERs) to improve the operability and efficiency of the grid.		
		Early retirement of existing fossil generation is a currently a live topic in the Company's Phase II ERP (Proceeding No. 16A-0396E) and part of the Colorado Energy Plan. The topic has also made its way into the current Miscellaneous Repository Proceeding (Proceeding No. 17M-0694E).
		Another limitation has been the overall expansion of DERs and the formation of markets that would help create markets for these services. Further expansion of DERs will help make these services more viable.

### **C. Existing Programs Stakeholder Group**

The main accomplishment for the Existing Programs Stakeholder Group is the creation of a series of reporting dashboards for the Company's various voluntary renewable programs. Users of this information can get high-level to more granular information on activity in these programs. The Company worked closely with stakeholders, mostly during the first half of 2017, to develop and further refine these reporting tools as a user-friendly addition to the Company's ongoing monthly compliance reporting on renewable program progress.

Another main feature of this Stakeholder Group has been the program updates that have been provided in nearly every meeting. These are yet another

---

the differences between the "economic carrying charge" and the "levelized carrying charge" used in the avoided capacity cost determination.

channel for communications with stakeholders on program status and any issues that require attention or improvements would better the program. The Company views plans to maintain these as agenda item for future meetings.

The table below provides a more high-level summary of the stated topics of the Existing Programs Stakeholder Group the dates which those topics were discussed and a summary of the outcomes.

Topics:	Stakeholder Group Dates	Summary of Outcomes:
<b>Schedule SPVTOU:</b> The Company and parties will continue to examine the SPVTOU tariff offering through the 2017-2019 RE Plan period to determine if the as-implemented tariff is operating as expected or if future modifications would be necessary. Evaluation of the operation of the SPVTOU tariff may include surveys of new participants to examine their experience. Other metrics may be developed for reporting purposes as agreed to by the parties.	6/27, 9/22, 12/15	Stakeholders have discussed this rate option on a number of occasions in 2017 and the Company has presented some analysis on customer participation and eligibility rationale. The Company plans to continue to engage with stakeholders through 2019 on this topic.
<b>Program Reporting:</b> Program Reporting shall be provided to this group. Within six months of the approval of this settlement agreement the Stakeholder group will determine the appropriate metrics for reporting. They will also discuss the amount of time the Company reasonably needs to institute the tracking mechanisms to report on the determined metrics.	2/3, 4/7, 6/27, 9/22, 12/15	<p>Early in 2017 the Company engaged with stakeholders to develop the various reporting matrices and dashboards. The time requirement of the Settlement Agreement helped dictate the pace. A variety of mock dashboards with a variety of graphs and matrices were created by stakeholders by May 2017 with further refinements during the remainder of 2017. The Company has remained open to refining these dashboard reports further. These dashboards have been available to interested parties for much of 2017 and are located on the Company's external web site (see links below).</p> <p>Solar*Rewards:  <a href="https://www.xcelenergy.com/staticfiles/xeresponsive/Working%20With%20Us/Renewable%20Developers/RenDevResCtr-SolarRewards-and-NetMetering-Dashboard-Q4-2017.pdf">https://www.xcelenergy.com/staticfiles/xeresponsive/Working%20With%20Us/Renewable%20Developers/RenDevResCtr-SolarRewards-and-NetMetering-Dashboard-Q4-2017.pdf</a></p> <p>Solar*Rewards Community:  <a href="https://www.xcelenergy.com/staticfiles/xeresponsive/Working%20With%20Us/Renewable%20Developers/RenDevResCtr-SolarRewardsCommunity-Dashboard-Q4-2017.pdf">https://www.xcelenergy.com/staticfiles/xeresponsive/Working%20With%20Us/Renewable%20Developers/RenDevResCtr-SolarRewardsCommunity-Dashboard-Q4-2017.pdf</a></p>
<b>Surveys:</b>	2/3, 4/7, 6/27,	The Company worked with stakeholders to refine the

<b>Topics:</b>	<b>Stakeholder Group Dates</b>	<b>Summary of Outcomes:</b>
The Company will facilitate surveys of customers participating in the Voluntary Renewable Programs offered by the Company. The parties may determine collectively what survey may be useful and the Company will provide the questions for the survey prior to the surveys initiation so that the parties may provide feedback. However, this provision does not limit the Company from conducting any survey of its customers or participating in broader surveys beyond its customer base.	9/22, 12/15	questionnaire and methodology for the survey, which was sent to 2017 renewable program participants as an online survey in Q1 2018. The results of the study were presented at the Q1 2018 stakeholder meeting on Feb. 23, 2018.
<b>Legislative changes:</b> Legislative changes necessary to enable further cost effective achievement of the goals of § 40-2-124, C.R.S.		This topic was not directly discussed during 2017 as many of the meetings took place after the legislative session had concluded.
<b>Low-Income Participation:</b> This stakeholder group will discuss the potential to modify the Solar*Rewards program such that an increased proportion of low-income customers would be able to participate.	6/27, 12/15	Most of the discussion around low income roof-top solar has come by way of the CEO's program detailed in Attachment J to the 2017 RES Report. CEO has also presented to the Stakeholder Group. The Stakeholder Group has hosted Denver Housing Authority for a presentation on issues around low income programs and challenges with ensuring benefit flows under certain circumstances.
<b>Process Improvement Discussions</b>	4/7, 6/27, 9/22, 12/15	Many of the meetings during 2017 have included a program component where program managers from Solar*Rewards, Solar*Rewards Community, Windsource®, and Renewable*Connect have presented status updates and have fielded questions/comments on a variety of program issues. While Program Managers have a variety of channels to work with stakeholders this have proven to be another viable channel for collaboration, communications, and program improvements. The Company expects that this effort will be a continued feature in the Stakeholder Group Meetings.