



Solar Garden ID No. _____

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

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

RECITALS

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.29 below) and the PV System Owner (as defined in Section 1.18 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 Alternating Current (AC) nameplate capacity of ___ kW.

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

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652 and Section 3877 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3877, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.
- 1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

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

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

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

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

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

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

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

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

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

1.13 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC

Subscriber's allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

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

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

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

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

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

1.19 "PVWATTS" shall mean the National Renewable Energy Laboratory's PVWATTS Calculator, or any successor product or service.

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

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

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

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

1.24 “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 \$500 for each user that logs into the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “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 4.7 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.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the

PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

1.29 “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.

1.30 “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.

1.31 “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

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “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 and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate

Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

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

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated 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. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$_____ per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, 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 Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, 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 Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the 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 and associated RECs 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 ten (10) MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

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

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

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

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

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

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

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. SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

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

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one (1) kW of the PV System's nameplate rating and to supply no more than 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; provided that the minimum one (1) kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3877(f) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3877.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no

longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall sell and maintain CSG subscriptions to achieve the result that at least 50% of the established minimum aggregate new CSG purchases correspond to residential, small commercial, agricultural, Eligible Low-Income CSG Subscribers and Eligible Low-Income Service Providers. SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers as set forth in Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers and Eligible Low-Income Service Providers, residential, small commercial, or agriculture (that qualify for residential or small commercial rate classes) rate class service customers (R, RE-TOU, RD, RD-TDR, C, C-TOU), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.7 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

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

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

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

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

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

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's

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

(d) The location of CSGs will not result in more than five (5) MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to ten (10) MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

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

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

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 solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

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

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

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

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

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

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the date that the Interconnection Agreement has been entered into between Public Service and SRC Producer and the SRC Producer makes a deposit payment under the Interconnection Agreement as provided in Rule 3882(d)(I) of the Commission's Rules Regulating Electric Utilities, 4 Code of Colorado Regulations 723-3-3882, Public Service shall provide to SRC Producer a written confirmation of such deposit, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service

of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered

and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed 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 eligible low income CSG subscriber, as defined in Rule 3877(f) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3877, meets the requirements set forth in 4 CCR 723-3-3877(f). 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. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3877(f) 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. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one (1) MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Renewable Energy Generation Information System in accordance with 4 CCR 723-3-3880(b) and 4 CCR 723 3 3659(j).

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

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

METER AND INTERCONNECTION

5.1 Construction Timelines.

The SRC Producer will have 30 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 36 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 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 Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Meter is installed. 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 Meter, at its sole cost, at any time and for any reason.

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

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the 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 (a) if interconnecting to Public Service's distribution system, 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 February 1, 2017, as may be updated from time to time and posted on Xcel Energy's website and (b) if interconnecting to Public Service's transmission system, in accordance with applicable rules, regulations, requirements, decisions, and guidance along with Public Service's processes, practices, and procedures with respect to transmission interconnection. 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, (a) nothing in the Interconnection Agreement shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

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

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 and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or

events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII

DEFAULT, REMEDIES AND DISPUTE RESOLUTION

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

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

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

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

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

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

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

ARTICLE VIII

LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service 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 tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

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

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

ARTICLE IX

LAWS AND REGULATORY BODIES

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3877 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments,

restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

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

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

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 14th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

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

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.



Solar Garden ID No. _____

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

SRC Producer

SRC Producer Name (printed): _____

SRC Producer Representative: _____

Title: _____

SRC Producer Signature: _____ **Date:** _____

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

By: _____

Date: _____.

Title: _____

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

PV System Owner (if different from SRC Producer)

PV System Owner Name (printed): _____

PV System Owner Representative: _____

Title: _____

PV System Owner Signature: _____ **Date:** _____

Solar Garden ID No. _____

Exhibit A to Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE

Exhibit B to Solar*Rewards Community Producer 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 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 (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

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

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

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

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C to Solar*Rewards Community Producer Agreement

CONSTRUCTION MILESTONES

Date		Results Achieved
	1	SRC Producer has submitted post bid information (deposit/escrow, proposed site location, and low income and residential rate customer subscriber summary).
	2	The SRC Producer Agreement has been executed.
	3	SRC Producer has received site acquisition/control.
	4	Site Survey and soils report have been obtained.
	5	SRC Producer has obtained all variance allowances and planning approval.
	6	SRC Producer has obtained all required permits.
	7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
	8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
	9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
	10	The SRC Producer has started PV System construction.
	11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
	12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
	13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
	14	Substantial Completion has been achieved and the date duly recorded.
	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 30 months of receiving an award.

Exhibit D to Solar*Rewards Community Producer Agreement

SUBSCRIBER MIX COMMITMENT

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers and Eligible Low-Income CSG Service Providers (*including the percentage of donated subscriptions set forth below*): ____%.

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

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

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

Percentage of SRC Allocation **donated** to SRC Subscribers who are direct-billed customers of Public Service and who qualify as Eligible Low-Income CSG Subscribers: ____%.