

Solar Garden ID No.SRC0HM96

# Solar\*Rewards Community Agreement

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

This Agreement is made and entered into this 8 day of Apr. 2014, by and between Pablic Service Company of Colorado, d/b/a/ Xeel Energy ("Public Service" or "Company"), a Colorado corporation, whose address is 1800 Larimer Street, Deaver, Colorado 80202, and GC Solar 2, LLC ("SRC Producer"), a Colorado Limited Liability Company, whose business address is 401 Tree Farm Drive, Carbondale. CO 81623, each of which may be referred in 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 anached hereto, with a rated Direct Current (OC) nameplate capacity of 499,170 kW.

in consideration of the premises and mutual covenants harrin contained, the Parties hereto agree as follows:

# ARTICLE

# 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 berein, 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 72333652, 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.
- "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 Mayeure" 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 Notar 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 persuant 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 linergy and associated RECs produced by the PV System during a particular Production Month.
- 1.8. "Photocoltaic Lineage" shall mean the not 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 Photocoltaic 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, invener, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, ensurements, 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 helding legal title or otherwise having fell 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 "RIIC" 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 are quality credits, benefits, emissions reductions, off-sets, altowances, or exten 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 of the PV System's environmental or renewable characteristics or attributes. For the avoidance of doubt, a "REC" excludes (i) any lecal, 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 under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment maring 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 Recovery of the PV System unrelated to its states as a generator of renewable or environmentally clean energy. One REC results from one megawant-least 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 allecable portion of the Photovoltaic linearyy and associated RECs produced by the PV System each Production Month.
- 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 allocable perion of Photovoltaic Unergy and associated RBCs 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 Credis" 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 destoner of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.
- 1.19. "SRC Subscriber Agency Agraement" shall mean an agreement entered into between each SRC Subscriber and SRC Produces, in a form substantially the same as the SRC Subscriber Agency Agreement attached bereto 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.
- \$.20. "Subscription" shall razan 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)(HI), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

#### ARTICLE II

# TRANSFER OF PHOTOVOLYAIC ENERGY AND ASSOCIATED RECS

- 2.1 Sale and Delivery of Subscribed Photogoliaic Emergy. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photogoliaic Energy produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.
- (a) For each SRC Salsscriber, Public Service shall apply as SRC Credit each infling period to such SRC Salsscriber's bill for retail electric service in accordance with Rato Schodule 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 4.6 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 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 Purchase and Sale of RECs Associated with Subsenbed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription information applicable to each Production Month. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per kilowatt-hour (kWh), with one REC being generated for each MWh of power generated by the PV System. Public Service shall pay SRC Producer the price of 0.110 per kWh for RECs purchased pursuant to this section. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed pertion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Meath. Such REC payment shall be made within thirty (30) days of the applicable meter reading.
- Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to xell and Public Service agrees to purchase all of the Photovoltane linergy and associated RECs 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 Menthly Subscription Information applicable to the Production Mooth. Public Service shall pay SRC Producer a price per kWn for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hearity 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 hearly 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 Xeal Energy's website. Payments for such parchases 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 and the RECs associated therewith. Such payment shall be made within thirty (30) days of the applicable meter residing.
- 2.4 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Plantovollaic 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 Photovolusic 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.
- 2.5 <u>Exclusive Dealing.</u> SRC Producer shall not sell any Photovoltaic Unergy 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.

#### ARTICLEBI

#### REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT

- 3.1 SRC Producer represents arxi 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 be self-cially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.
- (b) SRC Producer has been daily authorized to sell and deliver to Public Service Photovoltaic Energy produced by the PV System on behalf of all SRC Subscribers having valid Subscribers 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 Schodule SRC of Public Service's Electric Tariffs.

- (c) SRC Producer has the right and authority to self 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 kerein 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 bereaf.
- 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 necept 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 Subscribter 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 nace than a 40 percent interest in the heneficial 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) menths after the Date of Commercial Operation, the SRC Profacer 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 Sebscriber 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 72333652, each Subscription shall be sized to represent at least one kW of the PV System's manieplate 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 Sebscriptions 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 72333652.
- (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 the Solar Carden Site, except that, if the SRC Subscriber's designated premise is located in a county with a population of less than 20,000 residents according to the most recent available census figures, the designated premise may be an another county adjacent to the county where the Solar Garden Site is located, so long as the adjacent county also has a population of less than 20,000 residents and the designated premises is within Public Service's rotal electric service territory. If any SRC Subscribter'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.
- (c) At least five percent (5%) of the Subscriptness 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 72333652.

- 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.
- Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 most 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.
- The PV System shall have at least ten SRC Subscribers. (2)
- The PV System shall based a copacity nameplate rating of two congawatts (2 MW) or less. (b)
- 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 value 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.
- If the PV System has a numeriate 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.
- 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 persuant to Section 3.3 above.
- Code Compliance. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Solar Gorden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.
- 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.
- 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 interded

#### ARTRIEIV

# TERM, COMMERCIAL OPERATION AND PERFORMANCE

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 memory due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

Commercial Operation. Commercial Operation is achieved when. (a) 100% of the pameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsale operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (e) 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: (ii) the Production Meter has been installed; and (c) 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

- 4.3 <u>Deposit.</u> 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 Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.
- 4.4 Esanw 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)(IVXA) of the Commission's Rules Regulating Electric Utilities, 4 Code of Colorado Regulations72333665, or, if such esamward funds were deposited directly with Public Service, Public Service shall return the amount of any such esamward funds in accumulance with the terms of any esarow 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 esarowed funds were deposited directly with Public Service, Public Service shall return the amount of any such eserowed funds in accordance with the terms of any eserow agreement
- 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 compenents of the system should be damaged or destroyed, the SEC 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 requirer replacement shall be suspended, except for making payment for any Photovultaie Euergy 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 sighty (180) days, Public Service shall have the right, exercisable at its safe option, to terminate this Agreement upon as less than thirty (30) days written untice, with an further obligation of the Parties to perform becoming following the effective date of such termination. In all other situations, if the PV System is out of operation for more than nanety (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 4.5, 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, and further multiplied by the positive difference resulting, if any, by subtracting the price of RFCs as set furth in Section 2.2 above from the weighted-average price for RECs based on the winning hids under Public Service's most recent hid offering under its Solar\*Rewards program in Colorado.
- 4.6 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 an 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 finergy and RECs to be purchased and sold in accordance with Article II hereoff. Such data to be entered or changed by SRC Producer shall include additions and deterions to the SRC Subscriber's helding Subscriptions in the PV System, the SRC Subscriber's identifying information (e.g., account mainter and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscrib
- 4.7 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 Attocation 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 bolds 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, antil the situation is remedied by the SRC Producer.
- 4.8 <u>Subscription Transfers.</u> Subscriptions may be transferred herween eligible SRC Subscribers by reflecting such transfer in the Menthly Subscription Information through changes or carries 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 not.

- 4.9 <u>Disclosure of Production Information.</u> SRC Producer acknowledges and agrees that, in order for Public Service to earry 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
- 4.10 No Relocation. The PV System shall be lecated at the Solar Garden Site at all times during the Term of this Agreement.
- 4.11 Registration and Reporting. If the PV System has a numerial rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's pushestion data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 72333659(j).
- 4.12 Annual Reports. Within ten (10) days of its issuance, SRC Producer shall provide to Public Service a copy of its public annual report, including a copy of the annual report provided to each SRC Subscriber, all as required by 4 CCR 72333665(e)(f).
- 4.13 Audits. Public Service asserves 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 <u>Telecommunications Equipment.</u> 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, wixed 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.
- Failure to Maintain Telecommunication Ling. If the telecommunication line sequired to be maintained by SRC Producer parametric 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 Motor, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedale 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 ensubscribed energy hereunder effective as of the tirst 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 becomeder 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 hear 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, 4Code of Colorado Regulations 72333667, 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 Xeel Energy's website. The Parties acknowledge and agree that the performance of

their respective obligations with respect to the interconnection of the PV System persuant 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, detice and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller 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 sulely 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 Section5.5. 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 permeter 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 after or modify SRC Producer's or Public Service's rights, facter and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seiler and Public Service with respect to the arrangements for House Power.

#### ARTICLE VI

#### FORCE MAJEURE

- 6.1 Definition of Porce 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, metuding, without limitation, acts of God, sudden actions of the elements such as floods, cartlequakes, barricanes, or tornadoes; high winds of sufficient strength or duration to traderially durinage a PV System or significantly impair its operation such that it is no tenger capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material clanges in Photovoltaic Energy flows across the PV System caused by elimatic 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 perfermance, 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 emissions of any third party, including, without limitation, any vendor, materialment, customer, or supplied of SRC Producer, enland such acts or omissions are themselves excused by reason of Force Majeure; (ii) any foll 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; sadden 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 pr
- 6.2 Applicability of Force Majoure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, (nilure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially eaused by conditions or events of Force Majoure, provided that:
  - the son-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 Majoure;

- iti. 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 finergy or RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.
- 6.3 <u>Limitations on Effect of Force Majeure</u>. 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 income 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 odditional 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

7.1 <u>Default.</u> Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. 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. 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) risys following receipt of such written notice within which to core the asserted default (or if the asserted default is of a nature which cannot reasonably be cored within such 30-day period, to commence and thereafter diligently pursue a cure thereof.) 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.

#### ARTICLE VIII

#### LIABILITY AND INDEMNIFICATION

- 8.1 <u>Limitation of Liability.</u> 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, fort, upon any theory of indomnity, 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 Photovottale Energy or RCCs, and SRC Producer is urged to seek professional advice regarding this issue.
- 8.2 <u>Indemnification by SRC Producer.</u> SRC Producer shall indomnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, items, lawsuits, judgments or actions of

whatsoever nature that may be brought on account of the metalliation, 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.

#### ARTICULIN

# LAWS AND REGULATORY HODIES

- 9.1 Agreement Subject to have and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, hard 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 citize of the Parties hereto.
- 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 infirmtly 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 of 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 bereto (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 renegotate, or (a)) at any time during a period of ninety (50) days next following receipt by the other party of written assice of any such action by any such court or regulatory ogency, terrainate this Agreement by providing written notice to the other party bereto on or refere the end of such mixety (90) day period, such termination to be effective on the first stay of the month next following minety (90) days after the receipt of such notice of termination: provided however that, if such action or determination is rescinded prior to the offectiveness of such notice, such natice 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 entice 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 timergy 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 kerein, 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 <u>Governing Law.</u> This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

#### ARTICLE X

#### MISCELLANEOUS PROVISIONS

- 10.1 <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one end 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 Successors and Assigns. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties benefit, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be annuasonably withheld. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agreement has been entered into between SRC Producer's assigner and each and every SRC Subscriber.
- 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 Culorado 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 <u>Relationship of the Parties.</u> 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 <u>Construction</u>. 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 unexpected 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 agaity.
- 10.9 <u>Notices</u>. 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 overright courier:

If to Public Service:

Xeel Facing Atta: Solar\*Rewards 1800 Larimer St. Suite 1500 Derivor, CO 80212

If to SRC Producer:

or m 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 WITHREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer: (BC Selex 2, LLC
SRC Producer Name (printed):
SRC Producer Representative: Most K Boy ex-
Title: Auth. Reg.
SRC Producer Signature: 2 Date: 4/23/14
Public Service Company of Colorado d'Isla Xcel Energy:
Date: 6214
As authorized agent for Public Service Company of Colorado
PV System Owner (if different from SRC Preclucer):
PV System Owner Name (printed):
a contract de la cont
PV System Owner Representative:
Title:
PV System Owner Signature. Date.
The second secon

#### Exhibit A.

to Solar\*Rewards Community Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

#### Exhibit 6

to Solar\*Rowards Community Agreement

# Sample of: SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR\*REWARDS COMMUNITY SERVICE (colorado)

SRC Subscriber Name:		
SRC Subscriber Retail Customer Accor	unt No.:	
SRC Subscriber Service Address:		
SRC Subscriber E-mail Address:	P. C. S.	· Park Company of the
SRC Subscriber Mailing Address: 📖		· · · · · · · · · · · · · · · · · · ·
SRC Subscriber Telephone No:	(Primary)	(Alt.)
SRC Producer (Subscriber Organizatio Solar Garden ID No: SRC010496	n) Name:	
Name and Location of Solar Garden: _		
SRC Subscriber's Initial Subscription Shan	e (in kišowatts, og "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") att 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 safe 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. <u>Duties of SRC Producer Generally.</u> SRC Producer Smill 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 ensubscribed portions of the Photovoltaic Energy and associated Renowable tinergy 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 consensing its subscription in the PV System, including its beneficial interest in the Photovoltaic Emergy 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 Schoöule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

- Adjustments of Prior Period SRC Bill Craftis. 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 turnit any underpayments for all such SRC Credits, as necessary, among SRC Subscribes and other SRC subscribes owning subscriptions in the PV System. SRC Subscribes 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 revenition 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 disalose 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.
- 5. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Produces 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. <u>Term of Agency and Termination</u>, (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 subscribin 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 (h) 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. Consert 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 at the PV System pursuant to Section 40-20-127, C.R.S., the effective roles 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	
		and the second s
By:	By:	·
Title:	Title:	
Date	Date:	



Solar Garden ID No.SRC010498

# Solar\*Rewards Community Agreement

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

This Agreement is made and entered into this 8 day of Apr., 2014, by and between Public Service Company of Colorada, d/b/a/ Xeel Energy ("Public Service" or "Company"), a Colorado corporation, whose address is 1800 Lammer Street, Denver, Colorado 80202, and CEC SOLAR #1026, LLC ("SRC Producer"), a Colorado Urmited Liability Company, whose business address is 401 Tree Farm Orive, Carbondale, CO 81623, each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

#### RECITALS:

This Agreement governs line 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 Photovoltzic Energy and associated Renewable Energy Credits ("RECs") generated by the community solar garden photovoltzic solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A astached hereto, with a rated Direct Current (DC) passophate capacity of 115.150 kW

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

# ARTICLET

#### 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 72333652; 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 meen the day upon which Commercial Operation is first achieved pursuant to Section 42 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 Prover" 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 Gordon Site.
- 3.7. "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 persuant to Section 4.6 hereof, setting both the names of the SRC Subscriber's identifying softeness holding Subscriptions in the PV System, each such SRC Subscriber's identifying information, and the SRC Altocation applicable to each such SRC Subscriber's Subscriber's Subscriber's allocable portion of Photovolane Energy and associated RECs produced by the PV System during a porticular 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-plasse 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 relivered 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, easuments, 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 fell rights of ownership in and to 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 723-3-5632(t) and means a contracted 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 ancent 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 stantary or regulatory scheme (federal, state, or local) by virtue of or due to the PV System's energy production or the PV System's energy production capability because of the PV System's environmental or renewable actual energy productions or attributes. For the avaidance of doubt, a "REC" excludes (i) any local, state or fuderal production tax credit, characteristics or attributes. For the avaidance of doubt, a "REC" excludes (i) any local, state or fuderal production tax credit, characteristics or attributes or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on 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 under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment muring to the benefit of SRC Producer or the owner of the PV System based or ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and or ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and or ownership of, or energy production from any portion of the PV System, pursuant to Section 1603 of the American Recovery and PV System unrelated to its status as a generator of renewable or environmentally clean energy. On
- 3.14. "Solar Garden Sile" 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, interact 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 poetion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month.
- I 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 deltar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber's retail electric service bill to componente 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 custemer 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 aroan an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached insets as fixhibit B, by and through which each SRC Subscriber has authorized SRC Producer to set 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 ftV 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 Photovoluic Energy. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meteralli of the Photovoltaic Energy produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.
- (a) Fee each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retain 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 proceeding 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 is accordance with

the procedures set forth in Section 4.6 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.

- Produced by the PV System and delivered to Public Service agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription information applicable to each Production Month. The price to be paid by Public Service for the purchase of such RECs bereamder shall be expressed in dollars per kilowatt-hour (kWh), with one REC being generated for each MWh of power generated by the PV System. Public Service shall pay SRC Producer the price of 0.100 per kWh for RECs purchased pursuant to this section. 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.
- 2.3 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 Production Mater not attributable to a Subscription held by any SRC Subscriber based upon the Morahly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovolate Energy and associated RECs purchased pursuant to this section that is equal to the Company's average bondy incremental cost of electricity supply over the most recent calendar year. Public Service's actual average bourly 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 instalance Service, of its them-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average bondy incremental cost shall be pushed from time-to-time on Xeel Energy's website. Payments for such purchases shall be made mentally by check to SRC Producer for the unsubscribed portion of the Photovoltatic lineary recorded at the Production Moter during the immediately proceeding Production Month and the RECs associated therewith. Such payment shall be made within thirty (30) days of the applicable meter reading.
- 2.4 Title, Risk of Loss, and Wairanty of Title. As between the Porties, 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 er 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.
- 2.5 Exclusive Dealing. SRC Producer shall not sell any Photovoltnic linergy or any associated RHCs 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 Photovoltnic Energy and associated RHCs 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 dely 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 self 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 self-all of the RECs associated with the Photoveltaic 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 bereby agrees and consents to the terms of this Agreement and hereby authorizes SRC Producer to perform any and all acts recessary 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.
- 8.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions. The conditions set forth in the following subpartagraphs (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, detetion 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 entil 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 linergy 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 beauticial use of the Photovoltaic Energy or associated RECs generated by the PV System.
- (c) Unless the SRC Subscriber is an eligible low-income customen, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 Code of Colorado Regulations 72.333652, each Subscription shall be sized to represent at least one kW of the PV System's nameolate 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 renovable 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 72333652.
- (d) The premises to which a Subscription is annihered by a SRC Subscriber shall be a premises served by Public Service and shall be within the same country as the Safar Garden Site, except that, if the SRC Subscriber's designated premise is located in a country with a population of less than 20,000 residents according to the most recent available censes figures, the designated premise may be in anniher country adjacent to the country where the Solar Garden Site is located, so long as the adjacent country also has a population of less than 20,000 residents and the designated premises is within Public Service's retail electric service territory. 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, affective 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 de so. Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.
- (c) At least two 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 72333652.

- (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 nanseplate rating of two magawatts (2 MW) as 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 realinger 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.
- (d) If the PV System has a ramoplate capacity of one (1) MW or greater, the PV System shall be registered with the Western Renewable Energy Generation Information System ("WRFGIS") and its production data regularly reported to the WREGIS.
- 3.5 Responsibility by Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is elliptote to be an SRC Subscriber in the PV System pursuant to Section 3.3 shows.
- 3.6 Civile 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 <u>False Representation</u>. 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 crosses to remain true during the Term if such research would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 forces?
- 3.8 <u>Public Service Disclained.</u> 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

4.3 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 Communical 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 specifical in this Agreement.

4.2 <u>Camprocedal Operation.</u> Commercial Operation is achieved when: (a) 100% of the numerical equacity of the PV System is installed; (b) the PV System has operated without experiencing any observation or ansafe 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 Photovoltare Energy generated by the PV System have been obtained; (d) the Production Moter 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.

- 4.3 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 Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.
- 4.4 Esanow Fund. Within sinety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Role 3(65(d)(IVXA) of the Commission's Rules Regulating Electric Utilities, 4 Code of Colorado Regulation(72333665, 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 escrew 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.
- Maintenance and Repair of PY 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 duringed 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 berearder 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 esdestruction; 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 ant less than thirty (30) days written notice, with no feather 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 persuant to this Section 4.5, 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, and further multiplied by the positive difference resulting, if any, by subtracting the price of RECs as set forth in Section 2.2 above from the weighted-average prace for RECs based on the winning bids under Public Service's most recent hid offering under its Solar\*Rewards program in Colorado.
- 4.6 Lipstating 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 proviously-entered data through the use of the SRC Application System, in order to ensure that the 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 annuant of remaining unsubscribed Photovoltaic Energy and RECs to be purchased and sold in accordance with Article II bernof. Such data to be unleted 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 Subscriber's Subscriber's Subscriber's Subscriber's Subscriber's Description for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a particular if the total conceptate capacity of the PV System.
- 4.7 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 Protovoltaic 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 on 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 comedical by the SRC Producer.
- 4.8 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Menshly 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.

- 2.9 <u>Disclosure of Production Information.</u> SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' titls 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, the amounts paid to SRC Producer for unsubscribed Photovoltate Energy and Renewable Energy Credits generated by the PV System, and Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.
- 4.10 No Relocation. The PV System shall be located at the Solar Garden Site at ell times during the Term of this Agreement
- 4.11 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 72333659(i).
- 4.12 Annual Reports. Within ten (10) days of its issuance, SRC Producer shall provide to Public Service a copy of its public annual report, including a copy of the annual report provided to each SRC Subscriber, all as required by 4 CCR 72333665(c)(II)
- 4.13 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 Motes. Upon the initial satisfaction of all of the conditions set footh 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 SSC Producer shall reimburse Public Service for the crist 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 Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid behave 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 electrosic 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 Follows 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 Change applicable to measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Change applicable to magnificate labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public sorvice'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 an analysed bed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the analysed bed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the analysed bed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the analysed bed energy 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 impaid balance shall bear interest at the rate of one and one half percent (1.5%) per meanth to be revoked monthly.
- 5.4 Interconnection Agreement. The Parties recognize that SRC Producer and Poblic Service will enter into a separate interconnection Agreement in accordance with the interconnection process provided for by Role 3667 of the Commission's Roles interconnection Agreement in accordance with the interconnection process provided for by Role 3667 of the Commission's Roles interconnection Agreement in accordance with the interconnection process. "Safety, Interference and Regulating Electric Utilities, 4Code of Colorado Regulation 72333667, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as Interconnection fundaments for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as Interconnection fundaments for Cogenerators, Small Power Producers, and Customer-Owned Generation, "dated March 26, 2010, as Interconnection fundaments for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as Interconnection fundaments for Cogenerators, Small Power Producers, and Customer-Owned Generation, "dated March 26, 2010, as Interconnection fundaments for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, as Interconnection fundaments for Cogenerators, Small Power Producers, and Customer-Owned Generation, and the Power Producers and Customer-Owned Generation, and the Power Producers and Customer-Owned Generation (Cogenerators).

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 after 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 Soller 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 selely 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. 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 Soller and Public Service with respect to the arrangements for House Power.

# ARTICLE VI

#### **FORCE MAJEURE**

- 6.1 Definition of Force Majoure. (a) The term "Force Majoure," as used in this Agreement, areans causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majoure, including, without limitation, acts of God, saulden actions of the elements such as floods, earthquakes, horricanes, or tornadoes; high winds of sufficient strength or duration to materially durinage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaie Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic finergy flows across the PV System caused by elimatic change, lightning, fare, ice storms, substage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, larrorism, 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 in 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 jurischetion.
- (b) The term Force Majoure 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 Majoure; (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 nermal wear and tear or flaws, unless such mishap is caused by one of the following: caustrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tomadoes; substage; terrorism, war; riots; and emergency orders issued by a governmental authority or (ni) changes in market conditions that officed 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 producer.
- 6.2 Appliesbility of Force Majoure. (a) Neigher 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 Majoure, provided that:
  - the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Porce Majoure;
  - the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

- til. 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 Porce 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 assise 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 procluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovolonic linergy or RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.
- 6.3 <u>Limitations on Effect of Force Majeure</u>. In no event will any delay or faiture of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Torm. In the event that any delay or faiture 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 Robote Agreement pursuant to the Terms and Conditions thereof.

#### ARTICLEVIL

#### DEFAULT

7.3 Default. Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. 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 acceptivating Party. Prior to commencing any action to entitied 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.) 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.

### ARTICLE VIII

#### LIABILITY AND INDEMNIFICATION

- 8.1 <u>Unitation of Liability</u> Public Service shall not be responsible or liable for any personal injury or property damagn caused by the PV System or any individual component equipment of the system. Public Service shall not be fiable to the SRC Producer for any publitive, 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 toxable 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 <u>Indemnification by SRC Producer.</u> SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and uffiliates 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, regain 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 becamber or either of the Parties bereto.
- 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 officewise makes such performance illegal or impossible, such action or determination will be considered to be an event of Ferce Majeure. In the event that any such coart 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 purty 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 renegoriate the terms of this Agreement by providing written notice to the esher 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 assists to the other party hereto on or before the end of such ninesy (90) day period, such termination to be effective on the first day of the anouth 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 of 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 shell 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 self and deliver the Photovoltaic Energy output of the PV System and associated RhCs 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 parsuant to the provisions of Section 9.2 above.
- 9.4 <u>Governing Law.</u> 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 decased 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 decased original and binding.
- 10.2 <u>Successors and Assigns</u>. This agreement shall be building upon and inner 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 also between SRC Producer's assigned and each and every SRC Subscriber.
- 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 only 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 hind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.
- 10.3 Amendments of Medifications. No amendment, resolification, or change of this Agreement shall be binding upon the Parties unless such emusioment, modification, or change is in writing and executed by the Parties.
- 10.6 <u>Construction</u>. 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 érafter shall not apply to this Agreement.
- 10.7 No Third-Party Beneficiantes. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remarkes, 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 <u>Remedies Camulative</u>. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as comulative 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 focsimile 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:

Xeel Energy Attn: Solar\*Rewards 1800 Larimer St. Seite 1500 Denver, CO 80212

If to SRC Producer:

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

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

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

SRC Producer CEC Solar #1026, LLC	
SRC Producer Name (printed):	
SRC Producer Representative: Mor K Boy ===  Title: Aut L Rep.  SRC Producer Signature:  Date:	<u>4/23/14</u>
Public Service Company of Coloredo d'ala Xeel Energy:  Date:  Date:  Tirle: Dracon - Den Of S  As authorized agent for Public Service Company of Colorade	6/2/14
PV System Corner (if different from SRC Producer):	
PV System Owner Name (printed):	
•	
PV System Owner Reprosentative:	
Title:	
PV System Owner Signature: Date	a

#### Exhibit A

to Solar\*Rewards Community Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

#### Exhibit B

in Solar\* Rewards Community Agreement

# Sample of: SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR\*REWARDS COMMUNITY SERVICE (colorado)

SRC Subscriber Name:		W-08 57500, 1550 and
SRC Subscriber Retail Customer Account	No.:	
SRC Subscriber Service Address:	and the second s	20,000
SRC Subscriber E-ma  Address:	and the second s	
SRC Subscriber Mailing Address:	and the second s	2.12.5
SRC Subscriber Telephone No:	(Printary)	IAIL)
SRC Producer (Subscriber Organization)	Name:	
Solar Garden ID No: SRC010498		
Name and Location of Solar Garden:	The state of the s	AND
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") alt of SRC Subscriber's bandicial interest in and to the Photovoltaic Energy and acceptated Renovable Energy Credits generated by, and delivered to Public Services 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 the With the Colorado Public Utilaties 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 Phetovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter togeted 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 heneficial interest in the Photovoltaic Energy and associated Renewable Energy Coedits 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 linergy Credits generated and produced by the PV System, in secondance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

- 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 runit 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 than 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 colease to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all selevant 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. <u>Limitation of Agency.</u> 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 end to the Photovoltaic Energy and associated Renewable Energy Coedits 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 Critities 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 Photovoltoic Energy and associated Renewable lineagy Credita 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. <u>Representation and Acknowledgement.</u> By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and currect to the best of SRC Subscriber's knowledge and helief 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 estage 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 parametra Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedele SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Unitity Customer Data form shall be that form posted from time to time on the Xeel Energy website or the website of the Colorado Public Utilities Commission.

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

SRC SUBSCRIBER	SRC PRODUCER	
Ву:	Ву:	
Title:	Title:	
Date:	Date:	real of the species



Solar Garden ID No.SRC011229

# Solar\*Rewards Community Agreement

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

This Agreement is made and entered into this 27 day of Mar, 2014, 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 Fresh Air Energy VII, LLC ("SRC Producer"), a Colorado Limited Liability Company, whose business address is 650 Townsend Street, Suite 310, San Francisco, CA 94103, 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 1999.800 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 72333652, as of the date of this Agreement.

- 1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. "<u>Date of Commercial Operation</u>" 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.
- 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 <u>Sale and Delivery of Subscribed Photovoltaic Energy</u>. 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 4.6 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 Purchase and Sale of RECs Associated with Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per kilowatt-hour (kWh), with one REC being generated for each MWh of power generated by the PV System. Public Service shall pay SRC Producer the price of 0.040 per kWh for RECs purchased pursuant to this section. 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.
- 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 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 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 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 and the RECs associated therewith. Such payment shall be made within thirty (30) days of the applicable meter reading.
- 2.4 <u>Title, Risk of Loss, and Warranty of Title.</u> 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.
- 2.5 <u>Exclusive Dealing.</u> 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 72333652, 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 72333652.
- (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 the Solar Garden Site, except that, if the SRC Subscriber's designated premise is located in a county with a population of less than 20,000 residents according to the most recent available census figures, the designated premise may be in another county adjacent to the county where the Solar Garden Site is located, so long as the adjacent county also has a population of less than 20,000 residents and the designated premises is within Public Service's retail electric service territory. 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 72333652.

- (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) 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 <u>Code Compliance.</u> 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 <u>Public Service Disclaimer</u>. 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 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.

- 4.3 <u>Deposit.</u> 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 Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.
- 4.4 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 Regulations72333665, 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.
- 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 4.5, 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, and further multiplied by the positive difference resulting, if any, by subtracting the price of RECs as set forth in Section 2.2 above from the weighted-average price for RECs based on the winning bids under Public Service's most recent bid offering under its Solar\*Rewards program in Colorado.
- 4.6 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 and RECs to be purchased and sold in accordance with Article II hereof. 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.
- 4.7 <u>Subscription Limitations.</u> 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.
- 4.8 <u>Subscription Transfers</u>. 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.

- 4.9 <u>Disclosure of Production Information.</u> 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.
- 4.10 No Relocation. The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.
- 4.11 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 72333659(i).
- 4.12 Annual Reports. Within ten (10) days of its issuance, SRC Producer shall provide to Public Service a copy of its public annual report, including a copy of the annual report provided to each SRC Subscriber, all as required by 4 CCR 72333665(e)(II).
- 4.13 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 <u>Production Meter.</u> 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 <u>Telecommunications Equipment.</u> 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 <u>Interconnection Agreement</u>. 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* 72333667, 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 Seller 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 Section5.5. 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 Seller 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 <u>Limitations on Effect of Force Majeure</u>. 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

7.1 Default. Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. 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. 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.) 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.

# ARTICLE VIII

# LIABILITY AND INDEMNIFICATION

- 8.1 <u>Limitation of Liability.</u> 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 <u>Indemnification by SRC Producer</u>. 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 <u>Governing Law</u>. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

# ARTICLE X

# MISCELLANEOUS PROVISIONS

- 10.1 <u>Counterparts.</u> 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 <u>Successors and Assigns</u>. 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.
- 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 <u>Relationship of the Parties.</u> 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 <u>Amendments or Modifications</u>. 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 <u>Construction</u>. 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 <u>Remedies Cumulative</u>. 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 <u>Notices</u>. 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 1800 Larimer St. Suite 1500 Denver, CO 80212

If to SRC Producer:

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

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

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

SRC Producer:	
SRC Producer Name (printed):	
SRC Producer Representative: <u>John Gorman</u>	
Title: CEO of Ecoplexus, Inc., Managing Member of Fresh Air Ene	
SRC Producer Signature:	Date: 04/04/2014
$\circ$	
Public Service Company of Colorado d/b/a Xcel Energy:	$dM_{\alpha}$
Ву 52 9 Л	Date: 4/17/14
Title: Dinkery Drn DP1	
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

# Sample of: SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR\*REWARDS COMMUNITY SERVICE (colorado)

SRC Subscriber Name:		
SRC Subscriber Retail Customer Accour	nt No.:	
SRC Subscriber Service Address:		
SRC Subscriber E-mail Address:		
SRC Subscriber Mailing Address:		
SRC Subscriber Telephone No:	(Primary)	(Alt.)
SRC Producer (Subscriber Organization) Solar Garden ID No: SRC011229	) Name:	
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.

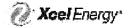
1. <u>Duties of SRC Producer Generally.</u> SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits 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. <u>Limitation of Agency.</u> 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. <u>Term of Agency and Termination.</u> (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	SRC PRODUCER	
		_
Ву:	Ву:	_
Title:	Title:	
Date:	Date:	



Solar Garden ID No.SRC011647

# Solar\*Rewards Community Agreement

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

This Agreement is made and entered into this 8 day of Apr. 2014, by and between Public Service Company of Colorado, david Xeel Emergy ("Public Service" or "Company"), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and CEC SOLAR #1023, LLC ("SEC Producer"), a Colorado Limited Liability Company, whose business address is 401 Tree Farm Drive, Carbondale, CO 81623, 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) name plate capacity of 569.170 kW.

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

### ARTICLE I

#### DEFINITIONS

As used herein, the following terms shall have the mannings specified or referred to below which shall apply equally to single and plure) forms. Except as otherwise provided for herein, expitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 Cody of Colorado Regulations 72333652, as of the date of this Agreement.

- 1.1. "Commission" shall mean the Public Unlittles 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 Maleure" 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 Gordon 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 Sohn Garden Site.
- 1.7. "Meadaly 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 persuant to Section 4.6 hereof, setting forth the names of the SRC Subscriber's 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 "<u>Production Mater</u>" 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 resintenance 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(i) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, however entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Highle 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 fultere stability or regulatory scheme (federal, state, or local) by virtue of or due to the PV System's actual energy production on the PV System's energy production capability because of the PV System's environmental or renewable observateristics 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 under Internal Revenue Code Section 48 (Finergy Credits); (ii) any direct governmental grant or payment intering 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 logislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generater of renewable or environmentally clean energy. One REC results from one megawant-boar 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 constructs, 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 parties of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month.
- 1.16. "SRC Allocation" shall mean the monthly allocation, stated in kilowates ("kW") as a share of the total naniculate capacity of the PV System, applicable to each SRC Subscriber's Subscribtion reflecting such SRC Subscriber's allocable posteon of Photovoltoic Energy and associated RECs produced by the PV System in a particular Croduction 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.
- 1.47. "SRC Credit" shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber's rotall electric service bill to compensate the SRC Subscriber for its beacticial 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 services 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 herwern 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 RBCs generated by the PV System to Public Service.
- 1.20. "Subscription" shall mean a proportional interest owned or hold by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(111), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

#### ARTR'LE 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 self and deliver to Public Service at the Production Meter all of the Photovoltaic Unergy 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 in 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 4.6 below. The correction of previously-applied SRC Credits among SRC Seiseribers 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 Purchase and Sale of RECs Associated with Subscriped Phenovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to self and Public Service agrees to purchase all of the RECs associated with the Phulovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dellars per kilowatt-bour (kWh), with one REC being generated for each MWh of power generated by the PV System. Public Service shall pay SRC Producer the price of 0.040 per kWh for RECs purchased pursuant to this section. 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 gayment shall be made within thirty (30) days of the applicable meter reading.
- 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 psoduced 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 Sebscription Information applicable to the Production Menth. 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 bourly 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 Xeel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the ansubscribed pertion of the Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month and the RECs associated therewith Such payment shall be made within thirty (30) days of the applicable meter reading.
- 2.4 Jitks, Risk of Less, 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.
- 2.5 Exclusive Dealing. SRC Producer shall not self 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 linergy produced by the PV System on behalf of all SRC Subscribers taying 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 balls in accordance with Rate Schoduse SRC of Public Service's Electric Tariffs

- (c) SRC Producer has the right and authority to sell the unsubscribed Photovokaic Energy produced by the PV System to Public Service on behalf of the PV System Owner, the SRC Subscribers and itself.
- (6) SRC Producer has the right and authority to self 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 self 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 sceept 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 Affocation 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 Affocation 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 RBCs 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 Photovoltake Energy or associated RECs generated by the PV System.
- (e) Unless the SRC Subscriber is an eligible few-income customer, as defined in Rule 3652(in) of the Commission's Rules Regulating Electric Utilities, 4 Code of Colorado Regulations 72333652, each Subscription shall be sized to represent at least one kW of the PV System's ranneplate rating and to supply no more than 120 person 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 Regulations Dectric Utilities, 4 Code of Colorado Regulations 72333652.
- (d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premises served by Public Service and shall be within the same county as the Solar Garden Site, except that, if the SRC Subscriber's designated premise is located in a county with a population of less than 20,000 residents according to the most recent available census figures, the designated premise may be in another county adjacent to the county where the Solar Garden Site is located, so long as the adjacent county also has a population of less than 20,000 residents and the designated premises is within Public Service's nearl electric service territory. If any SRC Subscriber's premises to which a Subscription becomes premise, 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.
- (c) At least five percent (5%) of the Subscriptions reflected in the SRC Allocation must be attributable to one or noise SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(m) of the Commission's Rules Regulating Exertic Utilities, 4 Code of Calorado Regulations 72533652.

- (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 becounder 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 expectly maniculate 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 accessity 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 callid 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)—If the PV System has a numeristic 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 Produces 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 <u>Code Compliance</u>. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Solar Garden Site is now 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 <u>Public Service Disclaimer.</u> 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 mency due and owing to either Party pursuant to this Agreement, and the indomnifications specified in this Agreement.
- 4.2 <u>Commercial Operation</u>. 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 presonnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photoveltaic Energy generated by the PV System have been obtained; (d) the Production Meser 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.

- 4.3 Deposit. Within sixty (60) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount poid to Public Service as a required deposit in connection with its application for the PV System under Public Service's Solar Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.
- 4.4 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/12333665, 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.
- Maintenance and Rossis 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 commonents of the system should be damaged or destroyed, the SRC Producer shall provide Public Service written notice and premptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sale expense. All of Public Service's obligations bereunder 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 hercunder following the offective 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 ninery (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.5, 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, and further multiplied by the positive difference resulting, if any, by subtracting the price of RECs as set forth in Section 2.2 above from the weighted-average price for RECs based on the winning bids under Pahlic Service's most recent hid offering under its Solar Rewards program in Colorado.
- 4.6 <u>Updating of Monthly Sebseciption Information.</u> 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 Menthly Subscription Information, by entering new or updating previously-contend data through the use of the SRC Application System, in order to ensure that the SRC Sebseribers and SRC Allocation applicable to each such SRC Sobscriber'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 epidated shall be used by Public Service with respect to the Photovoltaic Energy produced and delivered during such Production Menth to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy and RECs to be purchased and sold in accordance with Article II hereof. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers helding Subscriptions in the PV System, the SRC Subscriber's identifying information (n.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 an handredths) as a portion of the total nanocplate capacity of the PV System.
- 4.7 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 creatible 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 suspond 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.
- 4.8 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 not.

- 4.9 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 pand to SRC Producer for unsubscribed Photovoltaic lineagy 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.
- 4.10 No Religation. The PV System shall be located at the Solar Garden Site at all times during the Torm of this Agreement.
- 4.11 Registration and Reporting. If the PV System has a namepiate 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 72333659(8).
- 4.12 Annual Reports. Within ten (10) days of its isseance, SRC Producer shall provide to Public Service a copy of its public annual seport, including a copy of the annual report provided to each SRC Subscriber, all as required by 4 CCR 72333665(e)(11).
- 4.13 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 sofficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimbarse Public Service for the cost of installing the Production Meter. Such reimbarsement 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 impaid balance shall bear interest at the rate of one and one half percent (1.5%) per menth. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.
- 5.2 Indecommunications 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. Haless otherwise notified in writing by Public Service that an alternative reterminantication 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 <u>Fadure to Maintain Tolecommunication Line.</u> If the telecommunication line required to be maintained by SRC Producer parametr to Section 5.2 is inactive or non-operational during any Production Month when Public Service attempts to secess measurement data from the relementry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-operationals 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 refreeenmunication 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 first 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 between 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 ball percent (1.5%) per month to be invosced 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 Role 3667 of the Commission's Roles Regulating Electric Utilities, 4Code of Colorado Regulatinas 72533667, 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 Finergy'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 after or reaching SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to oreste any rights between Seller and Public Service with respect to the Interconnection Agreement.

5.5 House Power. This Agreement does not provide for illease Power. SRC Producer shall be sofely 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 fer 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 after or modify SRC Producer's or Public Service's rights, daties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Public Service with respect to the arrangements for House Power.

#### ARTICLE VE

# FORCE MAJEURE

- Definition of Force Majeure. (a) The term "Force Majeure," as used in this Appearent, 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, humaness, or ternadoes; high winds of sufficient strength or duration to materially decoage 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, sabetage, vandelism 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.
- (h) The term Force Majoure does not include (i) any acrs 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 Majoure; (ii) any full or partial cuntailment 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: cacastrophic equipment failure; acts of God; sudden actsons of the elements, including, but not limited to: fleods; furricanes, tomadoes; subotage; terrorism; war; riets; 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 producer's producer.
- 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:
  - the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
  - the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majoure;

- 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 Majacre; 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 RBCs under this Agreement except for extual 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 daiming 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 (385) day period, for such additional time as it, at its sole discretion, doesns 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

2.1 Default. Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the preventing 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. 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 he in default and the Party asserted to he in default asserted default (or if the asserted default is of a nature which cannot reasonably be excel within such 30-day period, to commence and thereafter diffigently pursue a cure thereof.) 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 amounditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

#### ARTICLE VIII

# LIABILITY AND INDEMNIFICATION

- 8.1 <u>Limitation of Liability.</u> 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, lawraits, 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.

#### ARTICLETX

#### 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, exdinances, orders and decisions issued or promutgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or cutter of the Parties hereto.
- Rights Upon Regulatory Agency of 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 exsent under this Agreement by either or both parties or etherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majoure. 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 fullowing ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescirated price to the effectiveness of such notice, such review will be deemed involut. 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 prorapt notice to the other party hereto as to any regulatory proceedings or actions described barein that could affect the rights and colligations of the Parties hereto.
- 9.3 Performance Pending Repegotiation or Termination. Issespective 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 <u>Governing Law.</u> 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 decided an original but all constitute one and the same instrument. The Parties agree that a facsimale copy of a counterpart signed by the other Party will be deemed original and binding.
- 10.2 Suggestors and Assigns. This agreement shall be binding upon and foure 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.
- 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 Culorado public utilities, municipal etilities, 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 Porties unless such arrandment, medification, or change is in writing and executed by the Parties.
- 10.6 <u>Construction</u>. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings on agreements are reduced to writing and signed by the respective parties. The rule of construction that embiguous 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 whatsnever, in layor 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 Camulative. Except as otherwise specifically provided forcin, each remedy provided for under this Agreement shall be taken and construct as canulative and in addition to every other namedy provided for herein or available at law or in equity.
- 10.9 <u>Notices</u>. 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 propaid and properly addressed or when sent via overnight course.

If to Public Service:

Xed Energy Attn: Solar\*Rewards 1800 Larimer St. Suite 1500 Benver, CO 80232

If to SMC Preducer:

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 amondment to this Agreement shall be in writing and signed by both parties hereto.

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

SXC Producer:		
SRC Producer Name (printed): $C \subseteq C$ , $C \subseteq C$ , $C \subseteq C$ , $C \subseteq C$		
SRC Producer Representative: Mak Boyer		
Tile Auth Rep		
SRC Producer Signature: 1/23/14		
Public Service Company of Colorado d/b/a Xcel linergy:		
By: (5e Sfol. Date: 6/2/14		
Title: Imaron. Dem OB		
As authorized agent for Public Service Company of Colorado		
PV System Owner (if different from SRC Prestages):		
PV System Owner Name (printed)		
1 + bystem Contact transcop		
PV System Owner Representative:		
Tithe:		
PV System Owner Signature: Date:		

#### Exhibit A

to Solar\*Rewards Community Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

#### Exhibit B

to Solar\*Rewards Community Agreement

# Sample of: SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR REWARDS COMMUNITY SERVICE (colorado)

SRC Subscriber Name:		
SRC Subscriber Retail Customer Accor		Merchania -
SRC Subscriber Service Address:	×1770×1000	see:
SRC Subscriber E-mail Address:	and the second s	A CONTRACTOR OF THE CONTRACTOR
SRC Subscribor Mailing Address:		2 h 1 a 3.
SRC Subscriber Telephone No:	(Primary)	(All.)
SRC Producer (Subscriber Organizatio	n) Name:	
Solar Garden ID No: SRC011647		
Name and Location of Solar Garden: _	* * ***********************************	777044
SRC Subscriber's initial Subscription Shor	er tota a see a conferencia	1,452

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 seiling 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 safe 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 finergy and associated Renewable timergy Credits generated and produced by the PV System, in accordance with Rate Schodule SRC of Public Service's Colorado Public Otitities Commission electric tariff.

- Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Produces 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 main 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 increases subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to precess 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. <u>Limitation of Agency.</u> This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's hencificial interest in 2nd 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 tubscription continues from 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 promalgated thereunder by the Culorade Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.
- 4. <u>Term of Agency and Termination.</u> (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 Photovollaic 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. <u>Regresentation and Acknowledgement</u>. 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 thereunds: by the Colorado Public Utilities Commission, and Rate Schodule 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	
and the state of t	The state of the s	
Ву:	Ву.	
Title:	Title:	



Solar Garden ID No.SRC011744

# Solar\*Rewards Community Agreement

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

This Agreement is made and entered into this 27 day of Mar, 2014, 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 Fresh Air Energy VIII, LLC ("SRC Producer"), a Colorado Limited Liability Company, whose business address is 650 Townsend Street, Suite 310, San Francisco, CA 94103, 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 1999.800 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 72333652, as of the date of this Agreement.

- 1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. "<u>Date of Commercial Operation</u>" 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.
- 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 <u>Sale and Delivery of Subscribed Photovoltaic Energy</u>. 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 4.6 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 Purchase and Sale of RECs Associated with Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per kilowatt-hour (kWh), with one REC being generated for each MWh of power generated by the PV System. Public Service shall pay SRC Producer the price of 0.060 per kWh for RECs purchased pursuant to this section. 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.
- 2.3 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 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 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 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 and the RECs associated therewith. Such payment shall be made within thirty (30) days of the applicable meter reading.
- 2.4 <u>Title, Risk of Loss, and Warranty of Title.</u> 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 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.
- 2.5 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 72333652, 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 72333652.
- (d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premises served by Public Service and shall be within the same county as the Solar Garden Site, except that, if the SRC Subscriber's designated premise is located in a county with a population of less than 20,000 residents according to the most recent available census figures, the designated premise may be in another county adjacent to the county where the Solar Garden Site is located, so long as the adjacent county also has a population of less than 20,000 residents and the designated premises is within Public Service's retail electric service territory. 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 72333652.

- (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) 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 <u>Code Compliance.</u> 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 <u>False Representation</u>. 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 <u>Public Service Disclaimer</u>. 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 <u>Commercial Operation</u>. 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.

- 4.3 <u>Deposit</u>. 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 Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.
- 4.4 <u>Escrow Fund</u>. 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*72333665, 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.
- 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 4.5, 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, and further multiplied by the positive difference resulting, if any, by subtracting the price of RECs as set forth in Section 2.2 above from the weighted-average price for RECs based on the winning bids under Public Service's most recent bid offering under its Solar\*Rewards program in Colorado.
- 4.6 <u>Updating of Monthly Subscription Information</u>. 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 and RECs to be purchased and sold in accordance with Article II hereof. 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 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.
- 4.7 <u>Subscription Limitations.</u> 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.
- 4.8 <u>Subscription Transfers</u>. 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.

- 4.9 <u>Disclosure of Production Information.</u> 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.
- 4.10 No Relocation. The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.
- 4.11 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 72333659(i).
- 4.12 Annual Reports. Within ten (10) days of its issuance, SRC Producer shall provide to Public Service a copy of its public annual report, including a copy of the annual report provided to each SRC Subscriber, all as required by 4 CCR 72333665(e)(II).
- 4.13 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 <u>Production Meter</u>. 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 <u>Telecommunications Equipment.</u> 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 <u>Interconnection Agreement</u>. 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* 72333667, 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 Seller 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 Section5.5. 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 Seller and Public Service with respect to the arrangements for House Power.

#### ARTICLE VI

#### **FORCE MAJEURE**

- 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 <u>Limitations on Effect of Force Majeure</u>. 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**

7.1 Default. Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. 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. 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.) 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.

# ARTICLE VIII

# LIABILITY AND INDEMNIFICATION

- 8.1 <u>Limitation of Liability.</u> 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 <u>Indemnification by SRC Producer</u>. 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.
- 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 <u>Performance Pending Renegotiation or Termination</u>. 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 <u>Governing Law</u>. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

## ARTICLE X

# MISCELLANEOUS PROVISIONS

- 10.1 <u>Counterparts.</u> 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 <u>Successors and Assigns</u>. 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.
- 10.3 <u>Sharing of REC Information</u>. 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 <u>Relationship of the Parties.</u> 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 <u>Amendments or Modifications</u>. 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 <u>Construction</u>. 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 <u>Remedies Cumulative</u>. 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 <u>Notices</u>. 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 1800 Larimer St. Suite 1500 Denver, CO 80212

If to SRC Producer:

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

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

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

SRC Producer:
SRC Producer Name (printed):
SRC Producer Representative: John Gorman
Title: CEO, Ecoplexus, Inc., Managing Member of Fresh Air Energy VIII, LLC
SRC Producer Signature: Date: Date:
Public Service Company of Colorado d/b/a Xcel Energy:  Date:
Date:
Title: Drizzon - Den Obs
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:
Date
PV System Owner Signature: Date:

Exhibit A

to Solar\*Rewards Community Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

#### Exhibit B

to Solar\*Rewards Community Agreement

# Sample of: 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:	D.:	
SRC Subscriber Telephone No:		
SRC Producer (Subscriber Organization) Na	me:	
Solar Garden ID No: SRC011744		
Name and Location of Solar Garden:		
SRC Subscriber's Initial Subscription Share (in k	ilowatts, 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. <u>Duties of SRC Producer Generally.</u> 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. <u>Limitation of Agency.</u> 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. <u>Term of Agency and Termination.</u> (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	SRC PRODUCER	
Ву:	Ву:	
Title:	Title:	



Solar Garden III No.SRC018667

# Solar\*Rewards Community Agreement

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

This Agreement is made and entered into this 8 day of Apr. 2014, by and between Public Service Company of Colorado, d'olar Xeel Energy ("Public Service" or "Company"), a Colorado corporation, whose address is 1880 Larimer Street, Denver, Colorado 80202, and CEC SOLAR #1021, LLC ("SRC Producer"), a Colorado Limited Liability Company, whose business address is 401 Tree Farm Drive, Carbondale, CO 81623, 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 helow) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovolinic Energy and associated Renewable Energy Credits ("RECS") generated by the community solar garden photovoltain solar system (the "PV System") installed, or to be installed, at the location described in Exhibit A stacked largets, with a ratest Direct Current (DC) nameplate capacity of 497.350 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 plurid forms. Except as otherwise provided for herein, expitalized 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 72333652, 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 heroof.
- 1.3. "Electric Taniffs" shall mean Public Service's electric terriffs as in effect and on file with the Commission from time to time.
- 1.4. "Force Majoure" shall have the meaning as sat forth in Section 6.1 of this Agreement.
- 1.5. "House flower" 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 Subscription, reflecting each SRC Subscriber's allocable portion of Photovoltine Unergy and associated RECs produced by the PV System during a particular Production Month.
- 1.8. "Photovoltaic linergy" 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 atternating current that is compliant with the Interconnection Agreement.
- 1.9. "Preduction Meter" shall mean the measuring facility installed by Public Service pursuant to Section S.1 bereaf to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possessom from SRC Producer to Public Service.
- 1.10. "<u>Production Month</u>" shall mean the calendar month during which Photovoltaic Facegy is produced by the PV System and delivered to Public Service at the Production Meter.
- 1.11. "EV. 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 recessary 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 Credat" or "REC" shall have the meaning set forth in 4 CCR 723-3-3652(1) 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 Higible Energy Resource, actualing 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 (fisteral, 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 draint, 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 under internal Revenus 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 purefaced to its status as a generator of renewable or environmentally clean energy. One REC results from one magawant-bour of electric energy generated from an eligible energy resource.
- 1.14. "Solar Garden Site" shall mean the pascel 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.
- 1.16. "SRC\_Allocation" shall mean the recatally allocation, stated in kilowatts ("kW") as a share of the total numerial capacity of the PV System, applicable to each SRC Subscriber's Subscribtion reflecting such SRC Subscriber's allocable portion of Photovoltoic linergy and associated RBCs 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 follow, 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 is sensil electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy produced by the PV System and Gelivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.
- 1.18. "SRC Subscriber" shalt mean the retail electric service customer of Patric Service who: (a) owns a beneficial share of the Photocoltain 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 Agreemegt" 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 Photovoltnic 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)(01), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

#### ARTICLER

# TRANSFER OF PROTOVOLTAIC 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 accombance with Rate Schedule SRC of Public Service's Electric Tabific 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 accessarily 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' fulls, 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 4.6 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 Purchase and Sale of RECs Associated with Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per kilowatt-hour (kWh), with one REC being generated for each MWh of power generated by the PV System Public Service shall pay SRC Producer the price of 0.080 per kWh for RECs purchased pursuant to this section. 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 thing (30) days of the applicable meter reading.
- 2.3 Parabase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to seil and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs publiced 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 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 about the 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 Schedale 9, Generator Imbalance Service, of its theo-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average heartly incremental cost shall be posted from time-to-time on Xed Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unachscribed portion of the Photovoltaic Energy recorded at the Production Motor during the immediately proceeding Production Month and the REC's associated therewith Such payment shall be made within thirty (30) days of the applicable meter reading.
- 2.4 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 all such RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Public Service.
- 2.5 <u>Exclusive Dealing.</u> SRC Producer shall not self 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 Subscribes.
- (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 TailO's.

- (c) SRC Producer has the right and authority to self 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 nuthorizes SRC Producer to perform any and all ages necessary on its behalf to carry out the detics, 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 (i) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as appendically 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, calless 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 Photovoltaia Energy or associated RECs generated by the PV System.
- (b) Effective upon the first day of the Production Month immediately following eighteen (18) menths 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 72333652, 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 statibuted (based on the summi estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing ratait renovable distributed generation at such premises. The minimum one kW sizing requirement terem 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 72333652.
- (d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premises served by Public Service and shall be within the same county as the Solar Garden Site, except that, if the SRC Subscriber's designated premise is located in a county with a population of less than 20,000 residents according to the most recent available census figures, the designated premise may be in another county adjacent to the county where the Solar Garden Site is located, so long as the adjacent county also has a population of less than 20,000 residents and the designated premises is within Public Service's retail electric service territory. 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 72333652.

- (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 feast ten SRC Sahserabers.
- (b) The PV System shall have a capacity nanceplate 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 assuing 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) If the PV System has a nameplate expectly of one (1) MW or greater, the PV System shall be segistered 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 persuant to Section 3.3 above.
- 3.6 Code Compliance. SRC Producer shall be responsible for ensuring that the PV System equipment installed at the Sular Garden Site is new equipment and received applicable codes, standards, and regulatory requirements at the time of installation
- 3.7 Ealse 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 causes to remain true dering 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 littless of the equipment for the purpose intended.

# ARTICLETY

# 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 1 erm 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 Porties 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 <u>Commercial Operation</u>. Commercial Operation is achieved when: (a) 160% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or uncafe operating conditions, as witnessed by Public Service personnel at the Solar Gardon Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovolusic Foregy 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 parament to the Interconnection Agreement.

- 4.3 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 Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.
- 4.4 <u>Escrow Fund.</u> 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)(UV)(A) of the Commission's Rules Regulating Beetric Diribties, 4 Code of Colorado Regulations72333665, or, if such escrived funds were deposited directly with Public Service, Public Service shall return the amount of any such escrived funds in accordance with the terms of any excrew 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 escrewed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrewed funds in accordance with the terms of any excrew agreement.
- Maintenance and Recain 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 absolute be damaged or destroyed, the SRC Producer shall provide Public Service written natice and groupply 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 Photocoltain Facings 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 lumdred 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 forther obligation of the Perties 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 Torm of this Agreement, Public Service shall have the right to terminate this Agreement by providing written nutice to SRC Producer anytime during the period following the expantion 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 4.5, then SRC Producer shall pay Public Service fiquidated damages in an amount equal to the estimated annual generation of the PV System, as determined via PVWATTS, multiplied by the number of years rentaining in the Term as of the effective date of such termination, and further multiplied by the positive difference resulting, if any, by subtracting the price of RECs as set forth in Section 2.2 above from the weighted-average price for RECs based on the winning bids under Public Service's most recent hid offering under its Solar\*Rewards program in Colorado.
- 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 Subscriber 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 Subscriber by System during such Production Month to each thy Public Service with respect to the Photovoltaic Energy produced and delivered during such Production Menth to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy and RECs to be purchased and sold in accordance with Article II hereof. 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.
- 4.7 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 comput and associated RPCs 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 simultant is remedied by the SRC Producer.
- 4.8 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 Producet via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is autibated, so long as the requirements of Section 3.3(d) are met.

- 4.9 <u>Disclosure of Production Information.</u> 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 pussession 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.
- 4.10 No.Relocation The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.
- 4.11 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 72333659(i)
- 4.12 Annual Reports. Within ten (10) days of its issuance, SRC Producer shall provide to Public Service a copy of its public annual report, including a copy of the annual report provided to each SRC Subscriber, all as required by 4 CCR 72333665(e)(t).
- 4.13 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription recerds and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

## ARTICLEV

## PRODUCTION METER AND INTERCONNECTION

- 2.1 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 tred 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 <u>Telecommunications liquipment</u>, SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Preducer's sole cost any accessary 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-menute 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 Ling. If the telecommunication line required to be maintained by SRC Profacer parsonnt 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 Motor, 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 is accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities. 4Code of Colorado Regulations 72333667, and Public Service's "Safety, Interference and Interconnection Guidebnes for Cogenerators, Small Power Producers, and Customer-Owned Generation." dated March 26, 2010, as may be updated from time to time and posted on Xuel 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 Bee-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other prevision 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 constanted to create any rights between Seller 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 shelly 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 essociated 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 after or monity 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 Selfer and Public Service with respect to the arrangements for House Power.

## ARTICLE VI

#### FORCE MAJEURE

- 6.1 Definition of Force Majoure. (a) The term "Force Majoure," as used in this Agreement, means causes or events beyond the reasonable centrol of, and without the fault or negligence of the Party claiming Force Majoure, including, without limitation, acts of God, sudden actions of the elements such as fleods, earthquakes, hurricanes, or tornadors; high winds of sufficient strength or duration to materially damage a PV System or significantly impoir 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 Bows across the PV System caused by climatic change, lightning, fire, ice storms, subotage, 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 mahility, despite due diffigence, 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 pany, including, without limitation, any vendor, materialman, customer, or supplier of SRC Producer, unless such acts or omissions are thomselves 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 deterand 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, believe, excurrence or event is substantially eaused by conditions or events of Force Majeure, provided that:
  - 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 denation than is required by the Force Majeure;

- iii. the non-performing Party proceeds with reasonable diligence to reasedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majoure; 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 Majoure 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 procladed by the condition or event of Force Majoure. 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 boyond its stated Torm. 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 disiming 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 dee diligence in its efforts to core the conditions or events of Force Majeure. This provision shall not operate to reserve the Costomer of any obligation to return to Public Service a promoted amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

#### ARTICLE VII

#### DEFAULT

7.1 Default. Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the provailing 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. 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 cared within such 30-day period, to commence and thereafter diligently pursue a cure thereof.) 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 that yether 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.

# ARTICLE VIII

## LIABILITY AND INDEMNIFICATION

- 8.1 <u>Limitation of Liability.</u> 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 flable 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 Independing tion by SRC Producer. SRC Producer shall indomnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, domands, tions, 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.

#### ARTICLEIX

## LAWS AND REGULATORY BODIES

- 9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties horounder shall be subject to all valid applicable state, local and federal laws, rates, 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.
- Rights Uson 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 gremises 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 Majoure. 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 reseasable good (inth opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as thanged, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other garty 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 bereto.
- 9.3 Performance Penting Renegotiation of Termination. Intespective 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 Photovoktair 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 sanagonize the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.
- 9.4 <u>Governing Law.</u> This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

# ARTICLE X

## MISCELLANEOUS PROVISIONS

- 10.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be decired 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 Successors and Assigns. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties bereto, 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 my 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.
- 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 Colessado public etilities, municipal utilities, electric ecoperatives 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 <u>Relationship of the Parties.</u> Nothing berein is intended nor shall ever be construed to create a joint venture, perhapship 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 hability, 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 excented by the Parties
- 10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Pasters in the construction or fulfillment hereof onless such understandings or agreements are reduced to writing and signed by the respective parties. The role 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 courser:

If to Public Service:

Xeel Energy Attn: Solor\*Rewards 1800 Larimer St. Suite 1500 Oenver, CO 80212

If to SRC Producer:

or at such other address as either jurity 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 Partics 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.

SRCProfusor CEC Solar # 1021, LLC
SRC Producer Name (printed):
SRC Producer Representative: Mok By - V  Title: Author Rep.  SRC Producer Signature: Mok By - V  Date: 4/13/14
Public Services Computing of Colorado d/h/a Xeel Energy:  By:  Date: Dele: 6/2/14  Title: Director - Dem Off  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: Tate.
PV System Owner Signature: Date:

## Exhibit A

to Solar\*Rewards Community Agreement

DESCRIPTION OF SOLAR GARDEN SITE-

#### Exhibit B

to Solar\*Rewards Community Agreement

# Sample of: 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: SRC(H8667		
Sciar Garden in No. SKC4/18001	•	
Name and Location of Solar Gardon:		
SRC Subscriber's Initial Subscription Share (in kilow	etts, or "kW"i	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 heneficial 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 pursuent to Public Service's Solar Rowards 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.

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 partions of the Photovoltaic Pinergy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter tocated 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.

- Adiastments of Prior Period SSC Bill Credus. 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 calculated 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'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 timergy 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 cheers: parifit
- 4. <u>Term of Agency and Termination.</u> (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 subscribin 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 linergy and associated Renewable Energy Credits generated by the PV System.
- (c) This Agency Agreement shall automatically terminate open: (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 this taken assignment of such contract from SRC Producer.
- 6. <u>Representation and Acknowledgement.</u> By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated benefit is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stored 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 promalgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission effective tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xeel 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:	Ву:
Title; Date:	Title:



Solar Garden ID No.SRC018677

# Solar\*Rewards Community Agreement

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

This Agreement is made and entered into this 8 day of Aug, 2014, 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 Community Energy Solar, LLC ("SRC Producer"), a Colorado Limited Liability Company, whose business address is Three Radnor Corporate Center, Suite 300 100 Matsonford Road, Radnor, MA 19087, 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 500.000 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* 72333652, as of the date of this Agreement.

- 1.1. "Commission" shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. "<u>Date of Commercial Operation</u>" 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.
- 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 <u>Sale and Delivery of Subscribed Photovoltaic Energy.</u> 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 4.6 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 Purchase and Sale of RECs Associated with Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month. The price to be paid by Public Service for the purchase of such RECs hereunder shall be expressed in dollars per kilowatt-hour (kWh), with one REC being generated for each MWh of power generated by the PV System. Public Service shall pay SRC Producer the price of 0.080 per kWh for RECs purchased pursuant to this section. 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.
- 2.3 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 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 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 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 and the RECs associated therewith. Such payment shall be made within thirty (30) days of the applicable meter reading.
- 2.4 <u>Title, Risk of Loss, and Warranty of Title.</u> 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 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.
- 2.5 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* 72333652, 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* 72333652.
- (d) The premises to which a Subscription is attributed by a SRC Subscriber shall be a premises served by Public Service and shall be within the same county as the Solar Garden Site, except that, if the SRC Subscriber's designated premise is located in a county with a population of less than 20,000 residents according to the most recent available census figures, the designated premise may be in another county adjacent to the county where the Solar Garden Site is located, so long as the adjacent county also has a population of less than 20,000 residents and the designated premises is within Public Service's retail electric service territory. 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 72333652.

- (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) 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 <u>Code Compliance.</u> 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 <u>False Representation</u>. 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 <u>Public Service Disclaimer</u>. 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 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.

- 4.3 <u>Deposit</u>. 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 Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.
- 4.4 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 Regulations72333665, 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.
- 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 4.5, 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, and further multiplied by the positive difference resulting, if any, by subtracting the price of RECs as set forth in Section 2.2 above from the weighted-average price for RECs based on the winning bids under Public Service's most recent bid offering under its Solar\*Rewards program in Colorado.
- 4.6 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 and RECs to be purchased and sold in accordance with Article II hereof. 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.
- 4.7 <u>Subscription Limitations.</u> 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.
- 4.8 <u>Subscription Transfers</u>. 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.

- 4.9 <u>Disclosure of Production Information.</u> 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.
- 4.10 No Relocation. The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.
- 4.11 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 72333659(j).
- 4.12 <u>Annual Reports.</u> Within ten (10) days of its issuance, SRC Producer shall provide to Public Service a copy of its public annual report, including a copy of the annual report provided to each SRC Subscriber, all as required by 4 CCR 72333665(e)(II).
- 4.13 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 <u>Production Meter.</u> 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 <u>Telecommunications Equipment</u>. 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, 4Code of Colorado Regulations 72333667, 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 Seller 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 Section5.5. 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 Seller and Public Service with respect to the arrangements for House Power.

# ARTICLE VI

#### FORCE MAJEURE

- 6.1 <u>Definition of Force Majeure.</u> (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 <u>Limitations on Effect of Force Majeure</u>. 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

7.1 <u>Default.</u> Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. 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. 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.) 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.

# ARTICLE VIII

# LIABILITY AND INDEMNIFICATION

- 8.1 <u>Limitation of Liability.</u> 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 <u>Indemnification by SRC Producer</u>. 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.
- 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 <u>Governing Law.</u> This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

## ARTICLE X

# MISCELLANEOUS PROVISIONS

- 10.1 <u>Counterparts.</u> 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 <u>Successors and Assigns</u>. 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.
- 10.3 <u>Sharing of REC Information</u>. 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 <u>Relationship of the Parties.</u> 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 <u>Construction</u>. 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 <u>Remedies Cumulative</u>. 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 <u>Notices.</u> 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:

If to SRC Producer:

Xcel Energy Attn: Solar\*Rewards 1800 Larimer St. Suite 1500 Denver, CO 80212 Community Energy Solar, LLC Three Radnor Corporate Center, Suite 300 100 Matsonford Dr Radnor, PA 19087

If to SRC Producer:

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

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

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

SRC Producer:	
SRC Producer Name (printed): Community Energy Sol	ar, LLC
SRC Producer Representative: Eric Blank	
Title: EVP	
SRC Producer Signature: Ear Blubs Da	te: 08/18/14
•	
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):	9/24/14
PV System Owner Name (printed):	
Trojstanovnot Hame (Manea).	
PV System Owner Representative:	
Title:	
PV System Owner Signature: Date	¥

#### Exhibit A

to Solar\*Rewards Community Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

Community Solar Garden Photovoltaic System 106 E. 1st Avenue, Antonito, CO 81120 Lat = 37.07 / Long = -106.00

## Exhibit B

to Solar\*Rewards Community Agreement

# Sample of: SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR\*REWARDS COMMUNITY SERVICE (colorado)

SRC Subscriber Name:		
SRC Subscriber Retail Customer Accoun	t No.:	
SRC Subscriber Service Address:		
SRC Subscriber E-mail Address:		
SRC Subscriber Mailing Address:		
SRC Subscriber Telephone No:	(Primary)	(Alt.)
SRC Producer (Subscriber Organization) Solar Garden ID No: SRC018677	мате;	
Name and Location of Solar Garden:		
SRC Subscriber's Initial Subscription Share (	in kilowatts, or "kW"):	kW
SRC Subscriber's initial Subscription Share (	in knowaus, or "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. <u>Duties of SRC Producer Generally.</u> 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.

- 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. <u>Limitation of Agency</u>. 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. <u>Term of Agency and Termination.</u> (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.

1N WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER	SRC PRODUCER	
Ву:	By:	
Title:	Title:	
Date:	Date:	