

SOLAR GARDEN SUBSCRIPTION AGREEMENT

This Solar Garden Subscription Agreement (“*Agreement*”) is entered into as of the ____ day of _____, 2016 (the “*Effective Date*”) by and between Caelum CSG1, a Minnesota limited liability company (“*Owner*”), and the City of Foley, a Minnesota Statutory A City (the “*Subscriber*”). In this Agreement, Owner and Subscriber are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

Comment [AR1]: Just a shell company created less than a year ago

RECITALS

A. Owner intends to develop, own, operate and maintain a photovoltaic generation facility qualified as a “Community Solar Garden” pursuant to Minn. Stat. 216B.1641 (“*CSG Program*”) to be located at 11010 65th Street NE, Foley, MN 56329 (the “*Facility*”) and has entered or will enter into a Standard Contract for Solar*Rewards Community (“*CSG Contract*”) with the local electric distribution company (the “*LDC*”). The designed capacity of the Facility shall be approximately 1000 kW_{AC}, subject to adjustment as described herein (the “*Facility Capacity*”);

Comment [AR2]: Should be a different site. City has concerns with this location and do want to give them some waiver argument

B. The energy produced by the Facility will be delivered by Owner to the LDC via interconnection of the Facility to the electric grid, and the LDC will calculate the monetary value of the energy received from the Facility per the applicable utility tariff and convert that amount into credits per kilowatt hour (the “*Bill Credit Rate*”) as defined in the CSG Contract) on the bills from LDC to the subscribers to the Facility (“*Credits*”);

C. Owner will, in accordance with the terms hereof, and through the administrative process established by the LDC as approved by the Minnesota Public Utilities Commission (“*MPUC*”), allocate and sell the right to receive Credits to its subscribers according to their respective Allocations (as defined below);

D. Subscriber is an LDC customer (Northern States Power Company Premise. No. 302166780) and desires to purchase Credits from Owner in proportion to its expected consumption of electricity at 251 4th Ave N, Foley, MN 56329 (“*Customer Site*”).

Comment [AR3]: This is just City. What about PW, Fire Hall, Pool, Ponds, lift stations? Is everything on 1 account? It should be clarified.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Subscriber and Owner agree as follows.

1. **Term.** The term of this Agreement shall commence on the Effective Date and, unless terminated earlier pursuant to the provisions hereof, shall terminate on the 25th anniversary of the Commercial Operation Date (as defined below) (the “*Term*”). The Term shall not be extended by virtue of any period of disconnection or event of Force Majeure experienced by the Facility.

2. **Operation of the Facility.**

a. Owner shall operate the Facility during the Term so as to deliver all energy generated by the Facility to the LDC in accordance with the CSG Contract and applicable LDC tariffs.

b. Owner shall maintain the Facility in good working order at all times during the Term, and shall operate the Facility in a commercially reasonable manner intended to maximize the amount of Credits allocable to Subscriber, consistent with good custom and practice for operation of utility solar generating facilities.

3. **Sale and Purchase of Credits; Allocation.**

a. Owner shall promptly notify Subscriber of the date commercial operation of the Facility commences as established pursuant to the CSG Contract (“**Commercial Operation Date**”). In the event that the Commercial Operation Date is not achieved by December 31, 2017, and either of the following events or circumstances occur, either Party may terminate this Agreement, without liability, upon delivery of notice of termination to the other Party:

i. after timely application to the LDC and commercially reasonable efforts to secure interconnection services, Owner has not received written confirmation and evidence that interconnection services will be available for the energy generated by the Facility at the Facility Capacity; or

ii. the LDC or another party with the authority to do so disqualifies Owner or the Facility from participating in the CSG Program.

b. Owner shall allocate a portion of Facility Capacity to Subscriber equal to one percent (1.0 %) of Facility Capacity (the “**Allocation**”). Owner shall provide to LDC the Allocation along with Subscriber’s name, LDC account number(s), and service address(es) (“**Subscriber Data**”).

Comment [AR4]: I believe 1.1% was originally discussed.

c. Owner shall sell to Subscriber and Subscriber shall purchase from Owner, the right to receive an amount of Credits calculated on the basis of that portion of the total kilowatt_{AC} hours delivered by the Facility to LDC which corresponds to the Allocation. The Allocation shall be effective for each and every LDC Production Month (as defined in the CSG Contract) during the Term. Owner shall post Credits to Subscriber’s account monthly for invoicing pursuant to Section 4 of this Agreement (“**Subscriber’s Monthly Credits**”). Thus, where x = number of Subscriber’s Monthly Credits, y = kilowatt_{AC} hours delivered in an LDC Production Month, and a = Allocation, $x = y * a$.

4. **Price and Payment.**

a. For the right to receive Subscriber’s Monthly Credits generated by the Facility each month, Subscriber shall pay to Owner an amount equal to the product of (i) the corresponding Subscriber’s Monthly Credits, and (ii) the Bill Credit Rate then applicable to the LDC’s Solar Rewards Community Program minus one cent (\$.01) (the “**Monthly Allocation Payment**”).

Comment [AR5]: Require a written estimate based on present usage.

b. Beginning with the second calendar month following the Commercial Operation Date, Owner shall invoice Subscriber for the Monthly Allocation Payment for the Credits posted to Subscriber’s account since the prior invoice date. Subscriber shall make its payments to Owner no later than thirty (30) days following receipt of the applicable invoice. Owner shall include with each invoice, a copy of the LDC statement delivered to Owner that

indicates the kWh_{AC} upon which the LDC calculates the Credit to Subscriber. ~~Subscriber agrees that Owner is entitled to charge and accrue interest on any past due balance at the rate of 1.5% per month or the maximum interest allowable by Applicable Laws, if such laws limit interest to a lesser amount. If Owner employs a collection agency or attorneys to collect any outstanding invoice(s), Subscriber agrees to pay all actual expenses of collection.~~

5. **Records and Audits.**

a. Upon written request by Subscriber, Owner shall provide (i) reasonable evidence of the accuracy of its metering equipment for the Facility and/or (ii) such other information and records reasonably requested by Subscriber to enable Subscriber to verify the accuracy of the Credits awarded by the LDC and any other calculation or measurements described in this Agreement.

b. Owner shall provide reports to Subscriber (i) monthly, containing the energy produced by the Facility, and (ii) annually, containing an audited financial statement of Owner, and a current statement of management, financing parties, and operatorship of Owner. Subscriber may provide comments to Owner on the accuracy and completeness of the annual reports, and shall provide a copy of any such comments to the LDC.

c. As required by Minnesota Statutes, section 16C.05, subdivision 5, the records, books, documents, and accounting procedures and practices of Owner and of any subcontractor of Owner relating to work performed pursuant to this Agreement shall be subject to audit and examination by the Subscriber and the Legislative Auditor or State Auditor as described in such subdivision. Owner and any subcontractor of Owner shall permit, upon reasonable advance written notice **and without charge**, the Subscriber or its designee, at its own expense, to inspect, copy, and audit its accounts, records, and business documents at any reasonable time during regular business hours, as they may relate to the performance under this Agreement. Audits conducted by the Subscriber under this provision shall be in accordance with generally accepted auditing standards.

6. **Taxes.**

a. Subscriber shall be solely liable for sales or similar taxes imposed by a governmental entity, if any, attributable to the sale of Credits allocated to the Subscriber.

Comment [AR6]: I am unsure whether there are any taxes issues. This should be looked into.

b. Subscriber shall have no interest in and have no entitlement to claim any investment tax credit or other tax benefits related to the construction, ownership, operation or maintenance of the Facility.

7. **Representations, Warranties and Covenants.**

a. Each Party represents and warrants to the other Party:

i. The Party is duly organized, validly existing, and in good standing in the jurisdiction of its organization and is qualified to do business in the State of Minnesota;

ii. The Party has full legal capacity to enter into and perform this Agreement;

iii. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party; and

iv. To the best of its knowledge, there is no litigation, action, proceeding or investigation pending before any court or other Governmental Authority by, against, affecting or involving its ability to carry out the transactions contemplated herein.

b. Owner represents, warrants, and covenants to Subscriber:

i. Owner has, or in the ordinary course will obtain, all licenses, permits and any other required documents to construct and operate the Facility;

ii. Owner shall perform its obligations under the CSG Contract and otherwise comply with all provisions of the CSG Program and other applicable tariffs.

iii. Except as specifically provided for in this Agreement and may be required by law or regulation, or with Subscriber's consent, Owner will not publicly disclose Subscriber's LDC account information, energy usage data, or Credits.

c. Subscriber represents, warrants, and covenants to Owner:

i. Subscriber's average annual energy consumption for its subscribing account(s) set forth below over the two (2) year period prior to the Effective Date is 67,360 kWh_{AC};

Comment [AR7]: Confirm that this is correct.

ii. Subscriber shall not install or procure any other distributed generation resource(s) serving ~~Subscriber's premises~~ the Customer Site to which energy is delivered by LDC under Account No. 51-5252807-3, which resource(s), when combined with the Allocation, may generate energy (including energy upon which the Credits are based) exceeding one hundred twenty percent (120%) of Subscriber's average annual energy consumption over the twenty-four (24) months prior to such installment or procurement.

iii. Within thirty (30) days of request by Owner, Subscriber shall complete, execute, and deliver to Owner the Subscriber Agency Agreement in the form attached hereto as Exhibit A. Upon execution, all of the information and statements of Subscriber provided therein shall be accurate.

iv. Subscriber understands and agrees it will have no interest in or entitlement to (a) benefits or derivatives of "Unsubscribed Energy" or "RECs" associated with the Facility as each is defined in the CSG Contract; and (b) incentives under the Minnesota Department of Commerce's Made in Minnesota program and LDC's Solar Rewards program associated with the Facility.

8. **Performance Guarantee.** Owner hereby guarantees that in every period of two (2) consecutive calendar years during the Term, beginning with the first full calendar year after the Facility achieves its Commercial Operation Date, Owner will provide Credits from operation of the Facility in an amount not less than ninety percent (90%) of Expected Deliveries (weather adjusted) as set forth on Exhibit B hereto (the “*Guaranteed Performance*”). Owner shall pay Subscriber one cent (\$.01) per Credit to the extent the actual number of Credits purchased by Subscriber during any such two (2) consecutive calendar year periods (the “*Measurement Period*”) is less than the Guaranteed Performance for the entire Measurement Period (combining the Expected Deliveries for both consecutive calendar years). Such payment shall be Subscriber’s sole remedy for non-performance by Owner under this Section 8. Owner shall have no liability under this Section 8 if the Facility’s failure to achieve Guaranteed Performance is due to an event of Force Majeure.

Comment [AR8]: Clarify payment schedule.

9. **Default and Force Majeure.**

a. **Events of Default.** The following shall each constitute an Event of Default by a Party:

i. The Party fails to make any payment due under this Agreement within thirty (30) days after delivery of notice from the other Party that such payment is overdue.

ii. The Party materially fails to perform or comply with any material representation, warranty, obligation, covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after delivery of notice thereof from the other Party.

iii. The Party is subject to a petition for dissolution or reorganization, voluntary or involuntary, under the U.S. Bankruptcy Code or any state law (including appointment of a receiver or assignment for the benefit of creditors), which is not terminated within sixty (60) days of commencement.

b. **Force Majeure.** Except as specifically provided herein, if by reason of Force Majeure, a Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within a reasonable time after the occurrence of the Force Majeure event, gives the other Party notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure event; (iii) no obligations of the non-performing Party, which were to be performed prior to the occurrence causing the suspension of performance, shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy the cause(s) preventing it from carrying out its obligations. “*Force Majeure*” as used in this Agreement shall mean an event or circumstances beyond the commercially reasonable control of a Party, which was not reasonably foreseeable and not resulting from the Party’s negligence, gross negligence or intentional acts, including, but not limited to fire, acts of God, earthquake, flood or other casualty or accident; break down or failure of the LDC’s electric distribution system; serial equipment defect; strikes or labor disputes; war, civil strife or other violence; and any law, order,

proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility. Force Majeure does not include the lack of funds, inability to make a payment or general change in the economy or particular markets.

10. **Remedies; Limitation of Liability; Waiver.**

a. **Remedies.** Subject to the limitations set forth in this Agreement, the Parties each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. ~~Under no circumstances shall Owner's liability for non performance under this Agreement exceed, in any one (1) calendar year, an amount equal to (i) the Allocation percentage times (ii) \$15,000. (For example, if the Allocation is 40%, then the limit described in the preceding sentence shall equal 40% x \$15,000 or \$6,000 total).~~ Owner shall defend, indemnify and hold harmless Subscriber, its present and former council members, officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting from any act or omission of Owner, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of Owner to perform any obligation under this Agreement.

b. **Owner Damages.** In the event of Subscriber's breach, repudiation, or termination of this Agreement in violation of the provisions hereof, Owner shall be entitled to recover from Subscriber (subject to Owner's duty to mitigate damages including its duty to try and find a replacement subscriber): (i) the unpaid Monthly Allocation Payments due at the time of termination; and (ii) Owner's actual, reasonable, and verifiable damages resulting from Subscriber's breach, including estimated Monthly Allocation Payments over the remaining Term less compensation received from the LDC, if any, attributable to Subscriber's Allocation. Any post-termination Monthly Allocation Payments that may qualify as damages under this section will be calculated-based upon the Schedule of Expected Deliveries of Credits, Exhibit B and the Bill Credit Rate at the time of Subscriber's breach of this Agreement. This provision does not waive any limits of liability or immunities the Subscriber may be entitled to under Minnesota Statutes, Chapter 466, as amended.

c. **Limitation of Liability.** EXCEPT AS EXPRESSLY ALLOWED HEREIN, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF A PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

d. **Exclusions.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 10, THE LIMITATIONS OF THIS SECTION 10 DO NOT APPLY TO A CLAIMS FOR (i) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (ii) FAILURE TO

COMPLY WITH APPLICABLE LAWS, (iii) BREACH OF CONFIDENTIALITY OR (iv) INTELLECTUAL PROPERTY INFRINGEMENT, (v) INDEMNIFICATION.

11. Early Termination.

a. Owner may terminate this Agreement on notice thereof to Subscriber in the event that Owner is unable to obtain financing or adequate subscriptions for the Facility on commercially reasonable terms on or before December 31, 2017.

b. If Owner fails to perform under this Agreement due to an event of Force Majeure that lasts more than twelve (12) months or fails to restore the Facility to full operation at its designed Facility Capacity within twelve (12) months following an event of Force Majeure, Subscriber shall have the right to terminate this Agreement by giving Owner at least sixty (60) days prior written notice of its intent to terminate based on such failure(s). In the event of termination pursuant to this Section 11(b), Owner shall pay to Subscriber, as liquidated damages, one cent (\$.01) for each Credit expected to have been allocated to Subscriber for the six (6) month period following the expiration of such twelve (12) month period based upon the Schedule of Expected Deliveries, Exhibit B.

c. In the event (i) the CSG Contract is terminated based on Owner's breach thereof or (ii) Owner materially breaches its obligations of performance in this Agreement and such breach is not cured within thirty (30) days after Owner receives written notice of such breach from Subscriber, then Subscriber may terminate this Agreement as provided in this Section 11; provided, however, if such breach is not capable of being cured within such thirty (30) day period and Owner has commenced and diligently continues actions to cure such breach, within such thirty day period then the cure period shall be extended to one hundred eighty (180) days so long as Owner is making diligent efforts to do so. In the event of a termination by Subscriber described in the preceding sentence, Owner shall pay Subscriber, as liquidated damages, one cent (\$.01) for each Credit expected to have been allocated to Subscriber for one (1) calendar year following termination based upon to the Schedule of Expected Deliveries, Exhibit B.

d. Subscriber may choose to terminate this Agreement for its convenience prior to expiration of the Term by giving Owner at least sixty (60) days prior written notice of its intent to terminate. In the event of termination pursuant to this Section 11(d), Subscriber shall pay to Owner a termination fee equal to (i) the unpaid Monthly Allocation Payments due at the time of termination; and (ii) the amount of estimated post-termination Monthly Allocation Payments over ~~the unexpired Term~~ one calendar year following termination less compensation expected to be received from the LDC attributable to Subscriber's Allocation. The post-termination Monthly Allocation Payments, under this section, will be calculated based upon the Schedule of Expected Deliveries, Exhibit B multiplied by the Bill Credit Rate as of the date of termination less the Expected Deliveries of Credits as set forth on Exhibit B multiplied by the LDC's expected avoided cost rate at the time of Subscriber's termination notice, plus \$0.01/kWh associated with the remarketing of renewable energy credits. Owner shall use commercially reasonable efforts to find a replacement subscriber, at similar terms and conditions stated herein and following receipt of Subscriber's termination notice, and upon the successful remarketing to a replacement subscriber, the post-termination Monthly Allocation Payment shall equal zero.

e. The Parties agree that actual damages in the event of termination of this Agreement as specified in Sections 11(b) and 11(c), would be difficult to calculate and that the liquidated damages specified herein are a reasonable approximation of such actual damages.

12. **Assignment.** No Party shall assign or in any manner transfer this Agreement or any part thereof excepting in the following circumstances: (a) Subscriber's assignment to a party approved in advance by Owner, which approval shall not be unreasonably withheld. For such assignment in subparagraph (a), Owner's approval shall give due consideration to only (i) the party's creditworthiness and; (ii) the party's eligibility under the Solar*Rewards Community Program, ~~(iii) Subscriber's payment to Owner of seven hundred fifty dollars (\$750) to cover Owner's administrative expenses associated with the transfer (the "Transfer Fee") and (iv) other factors which may evidence an increase in a material risk of a breach of this Agreement,~~ (b) Owner's assignment of this Agreement to any affiliate that owns or, by long-term lease, controls the Facility, provided that such affiliate has the same or better credit strength and has agreed in writing to recognize Subscriber's rights under this Agreement and to comply with the terms of this Agreement; (c) Owner's collateral assignment of this Agreement to any financial institution that provides financing for the Facility that has agreed in writing to recognize Subscriber's rights under this Agreement and to comply with the terms of this Agreement upon the foreclosure or conveyance in lieu thereof, and, in connection with any collateral assignment of this Agreement, Subscriber agrees to comply with the lender accommodations set forth in Exhibit C to this Agreement; (d) Owner's assignment of this Agreement, prior to the Commercial Operation Date, to another operator/owner of a community garden facility, in the same County and qualified under the Solar*Rewards Community Program which has sufficient capacity to accept Subscriber's Allocation, has the same or better credit strength, and agrees in writing to recognize Subscriber's rights under this Agreement and to comply with the terms of this Agreement; or (e) Subscriber's assignment of this Agreement to any of its affiliate or successor entity if the Minnesota legislature reassigns responsibility for the services provided by Subscriber (without change of service address) provided that such affiliate or successor entity has the same or better credit strength.

13. **Miscellaneous.**

a. **LDC Disputes.** Owner shall be solely responsible for resolving any dispute with LDC regarding the production of energy by the Facility. Subscriber shall be solely responsible for resolving any dispute with LDC regarding the calculation of the Bill Credit Rate.

b. **Notices.**

i. All notices and other formal communications which any Party may give to another under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be deemed delivered upon mailing, deposit with a courier for hand delivery, or electronic transmission, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission.

ii. Subscriber shall promptly notify Owner of any changes in Subscriber Data.

The notices and communications shall be sent to the following addresses:

If to Owner:

Owner
c/o BHE Renewables, LLC
Program Manager – MN Community Solar Gardens
1850 N. Central Ave. Suite 1025
Phoenix, AZ 85004
Phone: 515-252-6677
Email: BHERenewables@bherenewables.com

If to Subscriber:

City of Foley
251 4th Ave N.
Foley, MN 56329

c. Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law, unless such invalidity or unenforceability frustrates or negates an essential purpose of this Agreement.

d. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Minnesota without reference to any choice of law principles.

e. Dispute Resolution.

i. Amicable Settlement. The Parties shall attempt in good faith to resolve all disputes arising in connection with the interpretation or application of the provisions of this Agreement or in connection with the determination of any other matters arising under this Agreement by mutual agreement.

ii. Continuation of Performance. During the pendency of any dispute hereunder, the Parties shall continue to perform their respective obligations under this Agreement.

iii. Equitable Relief. Nothing in this Agreement shall be construed to preclude either Party from seeking or obtaining urgent equitable or injunctive relief from a court of law in relation to this Agreement.

iv. Venue and Jurisdiction. The Parties agree that the courts of the State of Minnesota and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law.

~~v. Binding Arbitration. Each party hereto agrees to binding arbitration. Such arbitration shall be in accordance with the rules and procedures of the American Arbitration Association (“AAA”). Notwithstanding any AAA rules and procedures, or any other provision of any state or federal laws, the parties agree that the arbitrators shall not consider or award consequential, incidental or punitive damages as a remedy. Upon the party’s request, AAA shall provide the parties a list of arbitrators each of whom have experience and expertise applicable to this agreement. Upon the parties’ receipt of such list, each party shall have ten (10) days to select an arbitrator. The two selected arbitrators shall then select a third arbitrator within thirty (30) days from the date the initial two arbitrators were selected and the matter subject to arbitration shall be arbitrated and a decision of the arbitrators issued within sixty (60) days after the selection of the third arbitrator.~~

f. Insurance. With respect to the services provided pursuant to this Agreement, Owner shall at all times during the term of this Agreement and beyond such term when so required have and keep in force the following insurance coverages and limits:

i. Commercial General Liability on an occurrence basis with contractual liability coverage:

General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,500,000
Each Occurrence—Combined Bodily Injury and Property Damage	\$1,500,000

ii. Workers’ Compensation and Employer’s Liability:

Workers’ Compensation	Statutory
-----------------------	-----------

iii. Employer’s Liability. Bodily injury by:

Accident—Each Accident	\$500,000
Disease—Policy Limit	\$500,000
Disease—Each Employee	\$500,000

An umbrella or excess policy over primary liability insurance coverages is an acceptable method to provide the required insurance limits.

The above coverages and limits establish the minimum insurance requirements. It is the sole responsibility of Owner to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Upon written request, Owner shall promptly submit copies of insurance policies to Subscriber.

iv. Owner shall not commence performance under this Agreement until it has obtained required insurance and filed with Subscriber a properly executed Certificate of Insurance establishing compliance. The certificate(s) must name Subscriber as the certificate

holder and as an additional insured for the liability coverage(s) for all operations covered under this Agreement. Owner shall furnish to Subscriber updated certificates during the term of this Agreement as insurance policies expire.

v. With the Subscriber's consent, which shall not be unreasonably withheld, conditioned or delayed, the Owner shall have the option of providing self-insurance to meet its obligations under this Agreement. In such event, Owner shall submit to Subscriber a Certificate of Self-Insurance, including evidence of its financial responsibility.

g. Compliance with Law. Owner shall comply with all applicable laws, ordinances, codes, tariffs, rules and regulations (collectively, "**Applicable Laws**") regarding Owner's obligations and performance under this Agreement. Owner shall obtain and maintain any and all permits, licenses, bonds, certificates and other similar approvals required in connection with this Agreement. In the event of an allegation that Owner has failed to comply with any Applicable Laws or failed to obtain any and all permits, licenses, bonds, certificates and/or any other similar approvals required in connection with this Agreement, Owner shall pay any fines or penalties imposed upon Subscriber as a result of such failure and shall reimburse Subscriber for any expenses (including reasonable attorneys' fees) incurred by Subscriber in responding to such allegation.

h. Entire Agreement. This Agreement, and all documents referenced herein, contain the entire agreement between Parties with respect to the subject matter hereof, and supersede all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

i. No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of another Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Subscriber and Owner hereunder are individual and neither collective nor joint in nature.

j. Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by each Party to this Agreement or its successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

k. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

l. Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

m. Survival. The provisions of Sections 10, (Remedies, Limitation of Liability; Waiver), 13(c) (Severability), 13(d) (Governing Law), 13(e) (Dispute Resolution), and 13(g) (Indemnity) and 13(p) (Confidentiality) shall survive the expiration or earlier termination

of this Agreement.

n. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a party to this Agreement.

o. Confidentiality. Each Party agrees that it will not disclose Not Public Data (as hereinafter defined), directly or indirectly, under any circumstances or by any means (excluding disclosures to the LDC or as are required as a participant in the CSG Program), to any third person (excepting Owner's agents and subcontractors performing services in fulfillment of Owner's obligations under this Agreement) without the express written consent of the other Party unless such disclosure is permitted by the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 (the "**Minnesota Government Data Practices Act**"), or required by applicable Law. "**Not Public Data**" means, not public data as defined in Minnesota Statutes § 13.02, subd. 8a (2014).

p. Data Practices.

i. Consistent with Minnesota Statutes, section 13.05, subdivision 6, if any data on individuals is made available to Owner by Subscriber under this Agreement, Owner will administer and maintain any such data in accordance with Minnesota Government Data Practices Act, and any other statutory provisions applicable to the data. If and to the extent that Minnesota Statutes, section 13.05, subdivision 11, is applicable to this Agreement, then: (A) all of the data created, collected, received, stored, used, maintained, or disseminated by Owner in performing this Agreement are subject to the requirements of the Minnesota Government Data Practices Act; (B) Owner must comply with those requirements as if it were a government entity; and (C) the remedies in Minnesota Statutes, section 13.08 apply to Owner.

ii. Consistent with Minnesota Statutes, section 13.055, if "private data on individuals," "confidential data on individuals" or other Not Public Data are provided to or made accessible to Owner by the Subscriber, Owner must: (A) have safeguards to ensure private or confidential data on individuals or other Not Public Data is only accessible or viewable by Owner employees, agents or subcontractors whose work assignments in connection with the performance of this Agreement reasonably require them to have access to the data; (B) immediately notify the Subscriber of any unauthorized access by Owner employees, agents or subcontractors, and unauthorized access by third parties; (C) fully cooperate with Subscriber investigations into any breach in the security of private or confidential data on individuals or other Not Public Data that may have occurred in connection with Owner's access to or use of the data; and (D) fully cooperate with the Subscriber in fulfilling the notice and reporting requirements of Minnesota Statutes, section 13.055. The penalties in Minnesota Statutes, section 13.09 governing unauthorized acquisition of Not Public Data apply to Owner and Owner employees, agents and subcontractors. If Owner utilizes agents or subcontractors to perform Owner's obligations under this Agreement, Owner shall incorporate these data practices provisions into any of its subcontracts.

iii. If Owner receives a request to release data referred to in this section, Owner must promptly notify Subscriber. The Subscriber will promptly give Owner instructions concerning the release of the data to the requesting party before the data is released.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF FOLEY

By: _____

Name: Dave Mosford

Title: Mayor

CAELUM CSG1, LLC

By: _____

Name: Eric Besseling

Title: Authorized Representative

EXHIBIT A
Subscriber Agency Agreement and Consent Form

Solar*Rewards Community

Subscriber Agency Agreement and Consent Form

The undersigned (“*Subscriber*”) has a Subscription to the following Community Solar Garden:

Community Solar Garden Name:	Caelum CSG1, LLC
Community Solar Garden Address:	11010 65 th Street NE, Foley, MN 56329
Community Solar Garden Operator:	Caelum CSG1, LLC
Community Solar Garden contact information for Subscriber questions and complaints:	BHE Renewables, LLC
Address (if different from above):	1850 N. Central Avenue, Suite 1025, Phoenix, AZ 85004
Telephone number:	515-252-6677
Email address:	BHERenewables@bherenewables.com
Web Site URL:	http://www.bherenewables.com/

Subscriber Name:	City of Foley
Subscriber’s Account Number with Northern States Power Company:	51-5252807-3
Subscriber Service Address where receiving electrical service from Northern States Power Company:	251 4 th Ave N, Foley, MN 56329

Comment [AR9]: Again, confirm that we’re including all electricity used by the city, not just for city hall.

By signing this Solar Rewards Community Subscriber Agency Agreement and Consent Form, the Subscriber agrees to all of the following:

1. Assignment of Renewable Energy Credits (“RECs”), Energy and Capacity to Northern States Power Company, a Minnesota corporation. The Subscriber agrees that the Community Solar Garden Operator has authority to assign all energy produced and capacity associated with the photovoltaic energy system at the Community Solar Garden to Northern States Power Company, and the Subscriber agrees that all energy produced, and capacity associated with the photovoltaic energy system at the Community Solar Garden shall belong to Northern States Power Company. The Subscriber also agrees that the Community Solar Garden Operator has authority to assign all RECs associated with the photovoltaic energy system at the Community Solar Garden to Northern States Power Company, and that if the Community Solar Garden or a person or entity on its behalf has assigned the RECs to Northern States Power Company, then all RECs associated with the photovoltaic energy system at the Community Solar Garden shall belong to Northern States Power Company.

2. Tax Implications. The Community Solar Garden Operator has provided the Subscriber with a statement that Northern States Power Company makes no representations concerning the taxable consequences to the Subscriber with respect to its Bill Credits to the Subscriber or other tax issues relating to participation in the Community Solar Garden.

Comment [AR10]: Again, this needs to be confirmed.

3. Northern States Power Company hereby discloses to the Subscriber that it recognizes that not all production risk factors, such as grid-failure events or atypically cloudy weather, are within the Community Solar Garden Operator's control.

4. Information Sharing. Participating in the Solar*Rewards Community Program will require sharing **Subscriber's Account Information** (name, account number, service address, telephone number, email address, web site URL, information on Subscriber participation in other distributed generation serving the premises of the Subscriber, Subscriber specific Bill Credit(s)) and **Subscriber's Energy Use Data** (the past, present and future electricity usage attributable to the Subscriber for the service address and account number identified for participation in the Community Solar Garden). The following outlines the type of information that will be shared, and how that information will be used.

Comment [AR11]: With whom?

a. Subscriber's Account Information and Subscriber Energy Usage Data. The Subscriber authorizes Northern States Power Company to provide the Community Solar Garden Operator (and the Community Solar Garden Operator's designated subcontractors and agents) with the Subscriber's Account Information and Subscriber's Energy Usage Data as described in Section 4 above. This information is needed to allow the Community Solar Garden Operator determine the extent to which the Subscriber is entitled to participate in the Community Solar Garden, and to validate the amount of the Bill Credits to be provided by Northern States Power Company to the Subscriber. The current data privacy policies of Northern States Power Company applicable to its Solar*Rewards Community Program provided to the Subscriber by the Community Solar Garden Operator pursuant Section 3 above are attached as Exhibit 1 of this **Solar*Rewards Community Subscriber Agency Agreement and Consent Form.**

These privacy policies include definitions of “Subscriber's Account Information” and “Subscriber's Energy Usage Data.”

b. Subscriber's Subscription Information: The Subscriber authorizes the Community Solar Garden Operator to provide information to Northern States Power Company identifying the Subscriber (with the Subscriber's name, service address, and account number) and detailing the Subscriber's proportional share in kilowatts of the Community Solar Garden and to provide additional updates of this information to Northern States Power Company as circumstances change. This information is needed to allow Northern States Power Company to properly apply Bill Credits for the photovoltaic energy generated by the Community Solar Garden. Also, this information is needed to allow Northern States Power Company to send to the Subscriber notices or other mailings pertaining to their involvement in the Solar*Rewards Community Program. The Community Solar Garden Operator shall not disclose Subscriber information in annual reports or other public documents absent explicit, informed consent from the Subscriber. The Community Solar Garden Operator will not release any Subscriber data to third parties except to fulfill the regulated purposes of the Solar*Rewards Community Program, to comply with a legal or regulatory requirement, or upon explicit, informed consent from the Subscriber.

c. Aggregate Information. Aggregate information concerning production at the Community Solar Garden may be publicly disclosed to support regulatory oversight of the Solar*Rewards Community Program. This includes annual reports available to the public related to specific Community Solar Gardens, including but not limited to production from the Community Solar Gardens; size, location and the type of Community Solar Garden subscriber groups; reporting on known complaints and the resolution of these complaints; lessons learned and any potential changes to the Solar*Rewards Community Program; reporting on Bill Credits earned and paid; and reporting on the application process. Aggregated information will not identify individual Subscribers or provide Subscriber-Specific Account Information, Subscriber-Specific Energy Usage Data or Subscriber-specific Bill Credits unless a Subscriber provides explicit informed consent. Depending on the nature of the aggregated information, however, it may still be possible to infer the amount of production attributed to individual Subscribers to the Community Solar Garden. The Subscriber agrees to the inclusion of its production information in the creation of the aggregated information. The Community Solar Garden Operator will not use aggregated information for purposes unrelated to the Solar*Rewards Community Program without first providing notice and obtaining further consent, unless the aggregated information is otherwise available as public information. The policies of Northern States Power Company related to sharing aggregated information are part of the data privacy policies contained in the attached Exhibit 1 of this **Solar*Rewards Community Subscriber Agency Agreement and Consent Form** and should be provided to the Subscriber by the Community Solar Garden Operator pursuant Section 3 above.

d. Information Requests from the MPUC or the Department of Commerce. The Subscriber agrees that the Community Solar Garden Operator and Northern States Power Company are authorized to provide any information they possess related to the

Subscriber or the Subscriber's participation in the Community Solar Garden to the Minnesota Public Utilities Commission (MPUC), the Minnesota Department of Commerce, or the Minnesota Office of Attorney General. This information is needed to allow proper regulatory oversight of Northern States Power Company and of the Solar*Rewards Community Program.

e. Liability Release. Northern States Power Company shall not be responsible for monitoring or taking any steps to ensure that the Community Solar Garden Operator maintains the confidentiality of the Subscriber's Account Information, the Subscriber's Energy Usage or the Bill Credits received pertaining to the Subscriber's participation in the Community Solar Garden. However, Northern States Power Company shall remain liable for its own inappropriate release of Subscriber's Account Information and Subscriber's Energy Use Data.

f. Duration of Consent. The Subscriber's consent to this information sharing shall be ongoing for the Term of the CSG Contract between the Community Solar Garden Operator and Northern States Power Company, or until the Subscriber no longer has a Subscription to the Community Solar Garden and the Community Solar Garden Operator notifies Northern States Power Company of this fact through the CSG Application System. Provided, however, the Subscriber's consent shall also apply thereafter to all such information of the Subscriber pertaining to that period of time during which the Subscriber had a Subscription to the Community Solar Garden.

g. Modification. The above provisions addressing data privacy and in Exhibit 1 shall remain in place until and unless other requirements are adopted by the MPUC in its generic privacy proceeding, Docket No. E,G999/CI-12-1344, or other MPUC Order. Northern States Power Company shall file necessary revisions to its tariffs and contracts within thirty (30) days of such Order.

Subscriber's Name: City of Foley

Subscriber's Signature: _____
Dave Mosford, Mayor

Date: _____

**Exhibit 1 to
Solar*Rewards Community Subscriber Agency Agreement and Consent Form**

**Data Privacy Policies of Northern States Power Company Pertaining to the Solar*Rewards
Community Program**

The data privacy policies of Northern States Power Company pertaining to the Solar*Rewards Community Program are as follows and may be changed from time to time with notice to the City of Foley and as filed in the Company's tariff or as otherwise may be authorized by the Minnesota Public Utilities Commission ("MPUC"):

Definitions

Unless indicated otherwise, the same definition and meaning of terms in this document are the same as contained in the Standard Contract for Solar*Rewards Community. For ease of reference, here are some of the specific definitions:

“Company” means Northern States Power Company, a Minnesota Corporation, and its affiliates and agents.

“Subscribed Energy” means electricity generated by the PV System attributable to the Subscribers' Subscriptions and delivered to the Company at the Production Meter on or after the Date of Commercial Operation.

“Subscriber” means a retail customer of the Company who owns one or more Subscriptions of a community solar garden interconnected with the Company.

“Subscriber’s Account Information” consists of the Subscriber's name, account number, service address, telephone number, email address, web site URL, information on Subscriber participation in other distributed generation serving the premises of the Subscriber, and Subscriber specific Bill Credit(s).

“Subscriber's Energy Usage Data” includes the past, present and future electricity usage attributable to the Subscriber for the service address and account number identified for participation in the Community Solar Garden.

Overview

This section addresses how Subscriber's Account Information and Subscriber's Energy Usage Data will be collected, used and shared as part of participation in the Solar*Rewards Community Program.

1. How Subscriber's Account Information and Energy Usage Data Will Be Exchanged

a. Subscriber Specific Information

Once a Subscriber has executed a Subscriber Agency Agreement and Consent Form, an ongoing data exchange will occur between the Company and a Community Solar Garden Operator (and their designated subcontractors and agents):

- (i) The Company will disclose the following Subscriber-specific information to the Community Solar Garden Operator:
 - Subscriber's Account Information
 - Subscriber's Energy Usage Data
 - Bill credits
 - (ii) The Community Solar Garden Operator will disclose to the Company the following Subscriber-specific information:
 - Subscriber's Account Information
 - Community Solar Garden Allocation for each Subscriber's Subscription stated in kW
 - Production data related to the PV System
 - Monthly Subscription Information
- #### b. Aggregated Subscriber Information

Aggregated Subscriber information will be reported as part of Permitted Public Reporting, outlined in Section 2(b) below.

To be considered "aggregated" the reported information must include information attributable to all Subscribers participating in a specific Solar*Rewards Community program site, which based on program requirements will contain a minimum of five Subscribers. Depending on the nature of the aggregated information, however, from this information alone or in combination with other publicly available information it may still be possible to infer the amount of production attributed to individual Subscribers to the Community Solar Garden.

2. How Subscriber's Information Will Be Used

The following outlines how the Subscriber's Account Information and Subscriber Energy Usage Data will be used as part of the Solar*Rewards Community Program.

a. Program Management

As part of administering the Solar*Rewards Community program, the Solar Garden Operator and the Company may provide information related to the Subscriber and/or the Community Solar Garden to:

- the MPUC
- the Minnesota Department of Commerce
- the Minnesota Office of Attorney General
- Other governmental or private entities as required by law or regulation

Account Information and Subscriber's Energy Usage Data to service providers, agents, or contracted agents who support the program on its behalf. The Company prohibits these service providers from using or disclosing the Subscriber's information except as necessary to perform these specific services or to comply with legal requirements. More information about the Company's general privacy practices is explained in its Privacy Policy available on www.xcelenergy.com.

b. Permitted Public Reporting

The Subscriber's Energy Usage Data of each participating Subscriber to a Community Solar Garden will be combined and reported in the aggregate by the Community Solar Garden Operator in its annual report on the Solar*Rewards Community program. The identity of specific Subscribers, the specific Subscriber's Account Information, Subscriber's Energy Usage Data and Subscriber-specific Bill Credit will not be listed in the public annual report unless the Subscriber has provided the Community Solar Garden Operator with prior written consent.

Per the requirements of the MPUC, the Company will provide to the MPUC annual reports which will include information or data requested by the MPUC or Minnesota Department of Commerce, including the following:

- Reporting on Solar*Rewards Community program costs, including an analysis of the deposit, application, participation and metering fees and further justification for these fees going forward;
- Reporting on the Solar*Rewards Community Gardens, including but not limited to size, location and the type of Solar*Rewards Community subscriber groups;
- Reporting on known complaints and the resolution of these complaints;

- A copy of each contract signed with a Community Solar Garden Operator, if not previously filed;
 - Lessons learned and any potential changes to the program;
 - Report on bill credits earned and paid; and the
 - Application process
- c. Prohibited Reporting or Sharing

Except as otherwise provided in this document, the Company will not disclose the Subscriber's Account Information, Subscriber's Energy Usage Data or Subscriber-specific Bill Credits to a third party without first obtaining the Subscriber's written consent.

Any requests by the Community Solar Garden Operator to the Company for information about a Subscriber that is not Subscriber's Account Information or Subscriber's Energy Usage Data will require execution of a separate written consent by the Subscriber. Notwithstanding the previous statement, the Company will not provide the Community Solar Garden Operator with the Subscriber's Social Security Number unless directed to do so by the MPUC or Minnesota Department of Commerce or compelled by law or regulation.

3. Subscriber Data Access and Correction

The following outlines what information is available to the Subscriber from the Company and the Community Solar Garden Operator, and methods of correcting any inaccuracies.

a. Information Available from the Company

Subscribers can contact the Company's call center to obtain information pertaining to their specific Bill Credit attributable to their participation in Solar*Rewards Community Program. The correction of any allocation of previously-applied Bill Credits among Subscribers or payments to the Community Solar Garden Operator for Unsubscribed Energy, pertaining to a particular month due to any inaccuracy reflected in such Monthly Subscription Information with regard to a Subscriber's Subscription in the PV System and the beneficial share of photovoltaic energy produced by the PV System, or the share of Unsubscribed Energy, shall be the full responsibility of the Community Solar Garden Operator, unless such inaccuracies are caused by the Company .

Subscribers may also obtain from the Company the following information related to the Solar*Rewards Community Program without obtaining written consent from the Community Solar Garden Operator:

- Site location
- Operator name
- Nameplate capacity

- Production data related to the PV system
- Bill Credit Rate and total amount of Bill Credits applied to the PV System
- Any other information pertaining to the Subscriber's Subscription

Other information regarding the Community Solar Garden Operator known to the Company will not be disclosed unless the Subscriber obtains prior explicit informed consent from the Community Solar Garden Operator or unless directed to do so by the MPUC or Minnesota Department of Commerce or compelled by law or regulation.

b. Information Available from the Community Solar Garden Operator

Subscribers and prospective subscribers can contact the Community Solar Garden Operator to obtain the following information:

- Future costs and benefits of the Subscription, including:
 - i. All nonrecurring (i.e., one-time) charges;
 - ii. All recurring charges;
 - iii. Terms and conditions of service;
 - iv. Whether any charges may increase during the course of service, and if so, how much advance notice is provided to the Subscriber;
 - v. Whether the Subscriber may be required to sign a term contract;
 - vi. Terms and conditions for early termination;
 - vii. Any penalties that the Community Solar Garden may charge to the Subscriber;
 - viii. The process for unsubscribing and any associated costs;
 - ix. An explanation of the Subscriber data the Community Solar Garden Operator will share with Northern States Power Company and that Northern States Power Company will share with the Community Solar Garden Operator;
 - x. The data privacy policies of Northern States Power Company and of the Community Solar Garden Operator;
 - xi. The method of providing notice to Subscribers when the Community Solar Garden is out of service, including notice of estimated length and loss of production;

- xii. Assurance that all installations, upgrades and repairs will be under direct supervision of a NABCEP-certified solar professional and that maintenance will be performed according to industry standards, including the recommendations of the manufacturers of solar panels and other operational components;
 - xiii. Allocation of unsubscribed production; and
 - xiv. A statement that the Community Solar Garden Operator is solely responsible for resolving any disputes with Northern States Power Company or the Subscriber about the accuracy of the Community Solar Garden production and that Northern States Power Company is solely responsible for resolving any disputes with the Subscriber about the applicable rate used to determine the amount of the Bill Credit.
- Copy of the contract with Northern States Power Company for the Solar*Rewards Community Program
 - Copy of the solar panel warranty
 - Description of the compensation to be paid for any underperformance
 - Proof of insurance
 - Proof of a long-term maintenance plan
 - Current production projections and a description of the methodology used to develop production projections
 - Community Solar Garden Operator contact information for questions and complaints
 - Demonstration to the Subscriber by the Community Solar Garden Operator that it has sufficient funds to operate and maintain the Solar*Rewards Community Program

The Community Solar Garden Operator is solely responsible for the accuracy of the Subscriber's share of the Community Solar Garden production information forwarded to the Company, and should resolve with the Subscriber any dispute regarding the accuracy of such information.

Subscribers can submit comments to the Company on the accuracy and completeness of its annual report by contacting solarrewardscommunity@xcelenergy.com.

4. **Data Retention**

The Company will retain the Subscriber's Account Information, Subscriber's Energy Usage Data and information on Bill Credits for as long as required under applicable law.

EXHIBIT B

Schedule of Expected Deliveries of Credits
[pro forma; final to be provided prior to commencement of construction]

Subscriber's Share (kWh_{AC}) (hereinafter "*Expected Deliveries*")

Comment [AR12]: Why the eroding numbers?

Year 1	16,790
Year 2	16,706
Year 3	16,623
Year 4	16,539
Year 5	16,457
Year 6	16,374
Year 7	16,293
Year 8	16,211
Year 9	16,130
Year 10	16,049
Year 11	15,969
Year 12	15,889
Year 13	15,810
Year 14	15,731
Year 15	15,652
Year 16	15,574
Year 17	15,496
Year 18	15,419
Year 19	15,341
Year 20	15,265
Year 21	15,188
Year 22	15,112
Year 23	15,037
Year 24	14,962
Year 25	14,887

Weather Adjustment Protocol for Expected Deliveries

For the Measurement Period respecting application of the Performance Guarantee, Expected Deliveries shall be adjusted to reflect any negative difference (shortfall) between Expected Solar Irradiation (“*ESI*”) and Actual Solar Irradiation (“*ASI*”). The ratio of ASI to ESI for the Measurement Period shall be applied to Expected Deliveries as a weather adjustment prior to comparing Actual Deliveries to Expected Deliveries for the purposes of the Performance Guarantee.

The method of the weather adjustment is as follows.

1. The ESI for the Facility is 1390 KWh per square meter.
2. The ASI is to be determined by monthly pyranometer readings at the Facility. The monthly readings are to be averaged for each of the two (2) consecutive calendar years in the Measurement Period.
3. The weather adjustment factor for the Measurement Period is the ratio of (i) ASI, determined per Step 2 above of this method to (ii) ESI, determined per Step 1 of this method. The Expected Deliveries for the Measurement Period is multiplied by this ratio to derive the Guaranteed Performance.

EXHIBIT C

Lender Accommodations

Subscriber acknowledges that Owner may be financing the installation of the Facility either through a lessor, lender or with financing accommodations from one or more financial institutions (“*Financing Party*”) and that Owner may sell or assign the Facility and/or may secure Owner’s obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the Facility. In order to facilitate such sale, conveyance, or financing, and with respect to any such Financing Party for which Owner has notified Subscriber in writing Subscriber agrees as follows:

(a) Consent to Collateral Assignment. Provided the Financing Party has agreed in writing to recognize Subscriber’s rights under this Agreement and to comply with the terms of the Agreement with respect to any of Subscriber’s rights thereunder upon the foreclosure or conveyance in lieu thereof, Subscriber consents to either the sale or conveyance by Owner to a Financing Party that has provided financing of Owner’s right, title and interest in the Facility and to this Agreement. Notwithstanding the above, if Owner fails to provide Subscriber with the name and updated contract information of the Financing Party the notice requirement herein is waived.

(b) Notices of Default. Subscriber will deliver to the Financing Party, concurrently with delivery thereof to Owner, a copy of each notice of default given by Subscriber under the Agreement, inclusive of a reasonable description of Owner default. Subscriber will not mutually agree with Owner to terminate the Agreement without the written consent of the Financing Party. Notwithstanding the above, if the Owner fails to provide Subscriber with the name and updated contact information of the Financing Party, the notice requirement is waived.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement, during the continuation of an event of default by Owner under its agreements with Financing Party, provided that the Financing Party has agreed in writing to recognize Subscriber’s rights under the Agreement and to not disturb any of Subscriber’s rights thereunder:

i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Owner, any and all rights and remedies of Owner under this Agreement in accordance with the terms of this Agreement and the Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Owner thereunder or cause to be cured any default of Owner thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Owner under this Agreement or (unless the Financing Party has succeeded to Owner’s interests under this Agreement) to perform any act, duty or obligation of Owner under this Agreement, but Subscriber hereby gives it the option to do so.

iii. The exercise of remedies under its security interest in the Facility, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale

contained therein, or any conveyance from Owner to the Financing Party (or any assignee of the Financing Party), shall not constitute a default under this Agreement.

iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Owner under the United States Bankruptcy Code or any similar state law, at the request of the Financing Party made within ninety (90) days of such termination or rejection, Subscriber shall enter into a new agreement with the Financing Party or its assignee having the same terms and conditions as this Agreement.

(d) Right to Cure.

i. Except for termination pursuant to Section 3(a) of the Subscription Agreement in connection with a failure to achieve commercial operation by December 31, 2017, Subscriber will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Owner) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after its receipt of notice thereof or (if longer) the periods provided for in this Agreement. The Parties respective obligations will otherwise remain in effect during any cure periods; provided that if such Owner default reasonably cannot be cured by the Financing Party within such periods and the Financing Party commences and continuously pursues cure of such default within such periods, such periods for cure will be extended for a reasonable period of time under the circumstances not to exceed additional sixty (60) days.

ii. If the Financing Party (including any transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Owner's assets and shall, within the time periods described in subsection (d)(i) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.
