

**VOS Commercial
Solar Garden Subscription Agreement**

This Solar Garden Subscription Agreement is entered into on _____.

Customer, **City of Saint Paul, MN** (the “**Customer**”), agrees to subscribe to a community solar garden (“**CSG**”) provided under the MN Value of Solar (“**VOS**”) solar subscription program in accordance with Novel Energy Solutions L.L.C. (the “**Provider**”) VOS Commercial Terms & Conditions provided to the Customer.

Customer wishes to subscribe to and Provider will reserve a maximum of 714,000 kilowatt hours (the “**Reserved Capacity**”) of the annual electricity output from the CSG for an estimated **Subscription Amount** of 560 kilowatts (KW), which is estimated to be 40 % (the “**Percentage Allocation**”) of the CSG’s total energy production.

Xcel will provide, and the Public Utility Commission (“**PUC**”) shall approve, a **Bill Credit Rate (“BCR”)** applicable to each CSG. The Initial Estimated BCR is nine hundred seventy-six ten-thousandths (\$0.0976) dollars per kWh of solar production.

Customer agrees to pay the **Subscription Rate**, which is defined as the difference between the BCR and Discount Rate. The **Discount Rate** shall be equal to one cent (\$0.01) per kilowatt hour (kWh) off of the applicable Bill Credit Rate. The Initial Estimated Subscription Rate is eight hundred seventy-six ten-thousandths (\$0.0876) dollars per kWh.

Customer will be invoiced monthly for the production posted to Service Addresses since the previous invoice date. The first subscription production statement summarizing the garden production posted to each Service Address will be issued two months after the garden’s Commercial Operation Date. The Subscription Payment will be calculated by multiplying the production posted to Service Addresses by the Subscription Rate.

Customer acknowledges receipt of Novel’s VOS Commercial Terms & Conditions and agrees to their incorporation into the terms of this Agreement.

The Parties agree to receive notice at the Customer and Provider points of contact noted below:

<u>Customer</u>	<u>Service Addresses</u>	<u>Provider</u>
City of Saint Paul, MN Attn: Jim Giebel 530 Saratoga St S Saint Paul MN 55116 jim.giebel@ci.stpaul.mn.us 651-226-6138	See Exhibit A	Novel Energy Solutions 1633 South Robert Street, Suite A West St. Paul, MN 55118 CustomerService@NovelEnergy.biz 612-345-7188



SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date noted herein.

City of Saint Paul, MN

Novel Energy Solutions L.L.C.

Signature

Signature

Printed Name

Mayor

Printed Name

Title

Title

Signature

Printed Name

Director of Office of Financial Services

Title

Signature

Printed Name

City Clerk

Title

Signature

Printed Name

City Attorney's Office

Title



VOS Commercial Terms and Conditions

1. **Services:** Subject to the terms hereof, Novel Energy Solutions L.L.C. ("NES"), agrees to provide the Customer with Xcel Value of Solar ("VOS") solar subscription services in accordance with Minn. Stat. § 216B.1641 (hereafter, "Services") as specified in the VOS Commercial Subscription Agreement provided to the Customer to which these terms and conditions are attached (collectively, the "Agreement").
2. **Term:** The term of this Agreement shall commence on the date upon which the applicable community solar garden is authorized by Xcel to generate and deliver electrical energy to the transmission system, the Commercial Operation Date ("COD"); and shall terminate on the date which is twenty-five (25) years thereafter.
3. **Effective Date:** The Effective Date of each Agreement shall be either the COD or the date of execution of the Agreement, whichever date occurs later.
4. **System Production Risk:** Monthly Subscription Payments are based on the actual CSG production posted to the Customer's account(s) since the previous invoice date which ensures the Customer only pays for realized bill credits. The Subscription Rate is a fixed discount to the Bill Credit Rate to provide a guaranteed savings for the Customer on all energy produced by the CSG.
5. **Onsite Electric Usage Guarantee:** NES guarantees that in no way will entering into this contract change or interfere with the Customer's existing electric infrastructure.
6. **Termination:** Customer may terminate this Agreement upon the occurrence of any of the following:
 - 6.1. **Termination Option after 120 Months:** If at anytime after ten (10) years the customer wishes to terminate the agreement they may do so without penalty by giving Provider twenty-four (24) months notice. Upon giving notice, Customer may leave at the earlier of (a) Provider finding a replacement subscriber or (b) twenty-four (24) months after giving notice. For clarity, this option is only available starting day one (1) of the eleventh (11th) year following the Effective Date, and without a replacement subscriber the earliest Customer may leave without penalty is the end of the twelfth (12th) year.
 - 6.2. **Ceasing to be an Eligible Xcel Customer:** If at any time the Customer moves or relocates outside the utility service area that is eligible to subscribe to the CSG and is no longer eligible to subscribe to the CSG, the customer may leave with a termination fee equal to the most recent three months of billed CSG subscription payments. This will be waived if Subscriber gives at least 12 months' notice prior to termination.
- 6.3. **No Fee Termination:** Customer may terminate this Agreement without a fee only under the following circumstances:
 - 6.3.1. In the event the COD is not achieved within twenty four (24) months after the date of execution of this Agreement, either Party may terminate this Agreement, without liability, by providing the other Party with a written notice of termination.
 - 6.3.2. In the event Provider breaches, fails to perform, or fails to comply with any representation, warranty, obligation, covenant or agreement described in this Agreement and such failure continues for a period of forty five (45) days after written notice thereof.
7. **Reserved Capacity:** The Reserved Capacity is defined as the maximum kilowatt-hours (kWhs) NES will reserve for Customer in each community solar garden (CSG). This is estimated by evaluating the Customer's historical energy usage. Xcel limits subscriptions to 120% of Customer's average annual usage.
8. **Percentage Allocation:** This is defined as the maximum amount of the Reserved Capacity that is eligible for subscription. This is calculated by dividing the Reserved Capacity by the CSG's total annual kilowatt hour production as determined by Xcel Energy and independent testing.
9. **Subscription Amount:** The Subscription Amount is defined as the kilowatts (KW) the Customer will be subscribed to in each community solar garden (CSG). This is calculated by multiplying the Percentage Allocation by the CSG's total size in kilowatts direct current (KW DC) as determined by Xcel Energy and independent testing.
10. **Discount Rate:** The Discount Rate off of the Bill Credit Rate is \$0.01 / kWh (one cent per kilowatt hour).
11. **Bill Credit Rate:** The Bill Credit Rate (BCR) will change annually throughout the Term of this Agreement. A new BCR shall be proposed by Xcel to the PUC on or about the first quarter of each calendar year. Once a BCR is set for a CSG, that BCR will not change aside from the predetermined annual increase. Any changes to the BCR do not impact the Discount Rate.
 - 11.1. The BCR is credited to the Customer's utility bill based upon the production of the CSG(s) to which the Customer is subscribed. The Bill Credit amount shall be calculated by Xcel by multiplying the BCR by the kilowatt hours (kWhs) produced by the CSG each billing period and by the CSG Percentage Allocation of corresponding Customer.
12. **Bill Credit Exceptions:** If the amount of Bill Credits exceeds the amount owed on Customer's Xcel electric utility bill in any billing period, the excess shall be governed by the Customer's utility contract with Xcel, or applicable law.
13. **Subscription Rate:** The Subscription Rate shall be determined by subtracting the applicable Discount Rate from the applicable BCR at that time.



14. **Subscription Payment:** Beginning with the second calendar month following the Commercial Operation Date, NES shall invoice Customer for the Monthly Subscription Payment for the bill credits posted to Customer's account since the prior invoice date. Provider will send monthly subscription production statements detailing the CSG's energy production and Subscription Payments posted to each Service Address. Customer may opt in or out of monthly 'automatic funds transfer' (credit card payment or direct withdrawal) at any time by notifying Provider. Customer shall make all payments prior to the invoice due date. For clarity, no payments shall be due to NES until 60 days following the CSG's Commercial Operation Date.
15. **Monthly Subscription Payment:** The Monthly Subscription payment is calculated by multiplying the energy production (kWh) posted to Service Addresses since the prior invoice date by the Subscription Rate.
16. **Outstanding Balances/Interest:** Any amounts not paid prior to the invoice due date will accrue interest at a rate of eight percent (8%) per annum (and if less than eight percent (8%) per annum, the maximum rate permitted by law) from the invoice due date until NES receives payment.
17. **Outages:** NES shall not invoice Customer during CSG outages lasting longer than twenty (20) consecutive days. NES shall provide written notice to Customer when it becomes aware that the corresponding CSG is out of service for longer than two (2) consecutive days, which notice shall include an estimate of how long the outage will last and the estimated loss of electricity production.
18. **Subscriber Eligibility Requirements:** As a condition precedent to entering into this Agreement, Customer must meet all applicable Subscriber Eligibility Criteria as provided in MN § 216B.1641 and VOS program regulations. Should Customer no longer qualify under the Subscriber Eligibility Criteria, this Agreement may be subject to termination by NES, Xcel, or a governmental authority having jurisdiction over the Xcel Solar*Rewards Community Program.
19. **Annual Reports:** In the first March which is at least twelve (12) full months following the Effective Date, and each March thereafter until the expiration or earlier termination of this Agreement, NES shall provide Customer an annual report describing the annual energy production of the Project for the prior calendar year.
20. **Environmental Attributes, Tax Credits, etc.** Customer's purchase of the Subscription Amount will not include benefits or derivatives of Renewable Energy Credits ("RECs") or green tags, carbon offset credits, rebates, unsubscribed electrical energy, tax credits, tax or environmental attributes associated with owning or operating the Project, or any other attributes of owning the Project (collectively "Environmental Attributes"). Customer acknowledges and agrees that all RECs and Environmental Attributes shall be retained by NES and that NES will be required to transfer ownership of all RECs to Xcel

pursuant to the CSG Contract. All unsubscribed electrical energy generated by the Project shall be treated as unallocated and Xcel will purchase all unallocated energy from NES at the applicable Tariff rate. In addition, Customer agrees to reasonably cooperate with NES so that NES may claim any Environmental Attributes from the Project.

21. **Transfer and/or Assignments:** No Party may assign or transfer this Agreement except as follows:

21.1. Customer Assignment or Transfer: Customer may only assign or transfer this Agreement with NES's prior written approval, which approval is in NES's sole and absolute discretion, and upon Customer's payment to NES of a two hundred fifty dollar (\$250.00) "Assignment or Transfer Fee," and Customer's payment to NES of all amounts due and owing to NES after reconciliation of the Monthly Subscription Payments for the period prior to the effective date of the assignment or transfer. Upon the execution of Customer's transfer request, neither NES nor Xcel shall have any liability to Customer or be required to refund Customer any money under this Agreement. In the event the Customer transfers a portion of its subscription, the transfer fee shall be prorated. Customer shall not profit from, or receive any payment as a result of, any assignment or transfer of this Agreement.

21.2. Customer New Service Address(es) within Xcel: The Parties agree this Agreement shall remain in full force and effect and automatically transfer without any fee to Customer's new Service Address(es) in the event Customer's Service Address(es) change, provided Customer remains an Xcel customer eligible to participate in the corresponding CSG under Minn. Stat. § 216B.1641 and Customer continues to satisfy the Subscriber Eligibility Criteria.

21.3. NES' Assignment, Transfer, or Reallocation: NES may assign or transfer this Agreement to any affiliate, financial institution, or entity after providing notice and obtaining Customer's prior consent, and upon any such assignment or transfer, NES shall be released from all future obligations under this Agreement. NES may transfer or allocate this Agreement and/or Subscription Amount to multiple CSG's and upon such transfer or reallocation will provide Customer updated disclosure information pursuant to the Agreement. Any assignment, transfer or reallocation shall not alter the Customer Discount Rate, contract length, termination provisions, billing mechanics, customer transfer options, eliminate arbitration as a dispute mechanism, or any key default provision.

22. Default & Remedies:

22.1. Events of Default:

22.1.1. Events of Default. The following shall constitute an "Event of Default":

22.1.1.1. A Party fails to make any payment due under this Agreement and such failure continues for a period of forty-five (45) days;

22.1.1.2. A Party breaches, fails to perform, or fails to



comply with any representation, warranty, obligation, covenant or agreement described in this Agreement and such failure continues for a period of forty-five (45) days after written notice thereof by the other Party;

22.1.1.3.A Party has provided false or misleading financial or other information to enter into this Agreement;

22.1.1.4. Customer assigns, transfers, encumbers, or sells this Agreement or any part of its Subscription Amount or Bill Credits in violation of Transfers and/or Assigns section; or

22.1.1.5. Customer makes an assignment for the benefit of creditors, admits in writing its insolvency, or is subject to a petition for dissolution or reorganization, voluntary or involuntary, under the U.S. Bankruptcy Code.

22.2. Remedies: Upon the occurrence of an Event of Default, NES may take any rights and/or remedies available to it at law or in equity. All rights, powers, and remedies provided under this Agreement are cumulative and not exclusive of any rights, powers, or remedies provided by applicable law. NES may terminate the agreement and replace the defaulting Customer, which will not waive payments owed or default fees.

22.3. [intentionally removed]

23. Limitation of Liability, Arbitration, Acts and Omissions

23.1. Limitation of Liability: Except as provided in the Early Termination and Transfer and/or Assigns sections with respect to Customer's liability upon termination or transfer of the Agreement, no Party shall be liable to the other Party for any indirect, special, punitive, exemplary, incidental, or consequential damages, whether arising in contract, tort, under statute, or in equity, and each Party hereby waives its rights to any such damages. To the maximum extent permitted by law, NES' liability arising under or in connection with this agreement cannot exceed the total overpayments made to NES by Customer for electricity produced to date.

23.2. NO WARRANTY: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NES MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE PROJECT OR ITS OBLIGATIONS HEREUNDER. NES DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NES DOES NOT WARRANT OR GUARANTEE THE AMOUNT OF ELECTRICITY PRODUCED BY CSG OR CUSTOMER'S PERCENTAGE ALLOCATION.

23.3. Arbitration: Any dispute, disagreement, or claim between Customer and NES arising out of or in connection with this Agreement shall be submitted to final and binding arbitration, in accordance with the Consumer Arbitration Rules of the American Arbitration Association. This Agreement to arbitrate is governed by the Federal Arbitration Act. This arbitration clause replaces the right to participate in a class action or similar proceeding.

23.4. Acts and Omissions: Each party will be responsible for its own acts and omissions and those of its officers, agents and employees with respect to any claims, lawsuits, or expenses for personal or property damages, losses or injuries, resulting from any activities undertaken pursuant to this Agreement. Nothing herein is intended or shall result in a waiver of the defenses or immunities, or monetary limits on damages that each is entitled to by law..

24. Miscellaneous:

24.1. Force Majeure: Except as specifically provided in this Agreement, if by reason of Force Majeure, NES is unable to carry out, either in whole or in part, any of its obligations described in this Agreement, NES shall not be deemed to be in default during the continuation of such inability, provided that, within a reasonable time after the occurrence of the Force Majeure event, NES gives Customer notice describing the particulars of the occurrence and the anticipated period of delay, and uses reasonable efforts to remedy the cause(s) preventing it from carrying out its obligations. "Force Majeure" as used in this Agreement means any event or circumstances beyond the reasonable control of NES not resulting from NES's negligence.

24.2. Waiver: Any delay or failure of a Party to enforce any of the provisions of this Agreement, or to require performance by the other Party of any of the provisions of this Agreement, shall not be construed to

24.2.1. be a waiver of such provisions or a Party's right to enforce that provision; or

24.2.2. affect the validity of this Agreement.

24.3. Severability: If any portion of this Agreement is determined to be invalid or unenforceable in any respect under applicable law, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of the Agreement will 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.

24.4. Notices:

24.4.1. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed delivered:

24.4.1.1. upon receipt, when delivered personally;



24.4.1.2. upon receipt, when sent by email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or

24.4.1.3. on the second day after mailing if mailed to the parties to whom notice is to be given, by first class mail, postage prepaid, and properly addressed to the Provider address noted within the Subscriber Agreement page.

24.4.2. Any Party may change the address for purposes of this Section by giving the other written notice of the new address in the manner set forth above.

24.5. 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 between the Parties relating to the subject matter hereof.

24.6. Binding Effect: This Agreement is binding upon the Parties and their successors and permitted assigns.

24.7. Survival: The provisions of Limitation of Liability, Arbitration, Indemnification section of this Agreement

shall survive the expiration or earlier termination of this Agreement.

24.8. Governing Law: The Agreement is made in the state of Minnesota and will be governed by Minnesota law, without regard to principles of conflicts of law, together with any applicable federal law.

24.9. Counterparts: This Agreement may be executed and delivered in identical counterparts by exchange of electronic copies showing the signatures of the Parties, which shall constitute originally signed copies of the same Agreement requiring no further execution. Each counterpart, when assembled, will be a complete original and fully effective instrument. Any acceptance of this Agreement by affirmation through a DocuSign Electronic Signature, or similar system, shall be deemed a binding acceptance of this Agreement and shall be valid as a signature.

24.10. Headings: The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.



Exhibit A

City of St. Paul, MN Service Address List

Account	Premise	Address	City	State	Zip