

## Community Solar Three Year Subscription Agreement

### **Parties\* to this Agreement:**

**Provider:****Nexamp, Inc.**

Contact: Nexamp Community Solar Team

Email: support@nexamp.com

101 Summer St, 2<sup>nd</sup> Floor

Boston, MA 02110

**Customer:**Company Name: City of Aurora, IllinoisContact Name: Jolene CoulterEmail: PurchasingDL@aurora-il.orgPhone: (630) 256-3550

Mailing Address:

44 E. Downer PlAurora, IL 60507**Meter Address** (if different from Mailing Address):See Schedule A

**Solar Project:** The “Project” is a community solar project located within the same utility territory as the Customer’s Account.

**Utility:** ComEd**Customer’s Utility “Account”:****Utility account number:** See Schedule A**Utility meter number:** See Schedule A**Energy Supplier** (if different from Utility):  
\_\_\_\_\_

**“Project Operation Date”** is anticipated to be (or was): 12/1/2020

**“Discount”** on Bill Credits: 20%

If the Project is not currently operational, we will notify you of the actual Project Operation Date which will be the date on which the Utility grants permission to operate the Project.

**“Subscription Size”:** See Schedule A kW (DC)See Schedule A kW (AC)**“Estimated Production”:** See Schedule A kWh

\* Under this Agreement, Nexamp may be referred to as “Provider”, “us”, “we”, or “our” and Customer may be referred to as “you” or “your”.

Executing this Community Solar Subscription Agreement and the Community Solar Disclosure Form (collectively, the “Agreement”), allows Nexamp to enroll your Account in a subscription to the Project, which will lead your Energy Supplier (which is your Utility unless you have chosen an alternative supplier) to place a credit on your electricity supply bill (the “Bill Credits”). The amount of Bill Credits you receive each month will depend on factors including your choice of Energy Supplier (and the particular rate you select), the total production of the Project during that month, and your Subscription Size. In exchange for receiving these Bill Credits, you will be obligated to pay us an amount equal to the value of the Bill Credits, assuming the default electricity supply charge with your Utility, minus your Discount of 20% of the Bill Credits total (the “Price”). The Price is the only recurring charge under this Agreement. There is no upfront charge nor any termination fees for you.

In consideration of the mutual premises, representations, warranties, covenants and conditions herein, the Parties agree as follows.

1. **Term:** The term of this Agreement begins on the date you execute this Agreement (the “Effective Date”) and will continue, unless terminated earlier pursuant to the terms herein, through the date upon which the transactions for the final Bill Credit delivery 3 years from the Project Operation Date are complete (the “Term”). This contract will automatically renew for another 3 year term unless either Party provides written notice of cancellation at least 120 days prior to the end of the current Term, provided however, such renewals may in all events only extend through the 15<sup>th</sup> anniversary of the Project Operation Date.
2. **Early Termination:** This Agreement may be terminated prior to the end of the Term (the “Early Termination Date”) by:
  - a. You pursuant to Sections 8 or 9 of this Agreement;
  - b. Nexamp, upon notice to you (i) at any time prior to the actual Project Operation Date, if we determine that developing the Project no longer feasible, (ii) if community solar is no longer available for the Project, (iii) upon three (3) months prior written notice; or (iv) upon your default of this Agreement.

Upon early termination under this Section 2, each Party shall perform all obligations due to the other Party that arose prior to the Early Termination Date (including for the payment of invoices for final Bill Credit delivery) after which, the Parties shall have no further obligations hereunder, except those which survive this Agreement’s expiration or termination. You understand that, depending on your Energy Supplier’s treatment of Bill Credits, you may lose credits by switching Energy Suppliers.

3. **Sale and Purchase; Payment:**
  - a. We will invoice you for the Price each Utility billing period, and you agree to pay the invoices pursuant to the terms of the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et. seq.*) but in all events within 30 days of the invoice date
  - b. You will automatically be enrolled in our electronic billing program, which features invoice notifications via email and online payment options including auto-payment, ACH, and credit/debit card storage. You can access our online customer portal and your electronic bills at [cs.nexamp.com](http://cs.nexamp.com). At any time and without penalty to you, you may opt out of our online billing program or request paper invoices either via our portal or by written notice to us.
4. **Delivery; Change of Account; Acknowledgments:**
  - a. To deliver the Bill Credit to you, we will deliver the Project’s electricity to the Utility at the Project meter as the electricity is produced, from the actual Project Operation Date through the Term.
  - b. You understand:
    - i. that the Bill Credit delivered to you in any particular billing period will be reflected on your Account statement according to the Utility’s billing cycle, and that certain Utility costs may not be reduced or offset by the Bill Credit.
    - ii. that the Utility will meter and record the Project’s electricity production
    - iii. that your Energy Supplier, which may not be your Utility, will calculate and apply the Bill Credit to your Utility Account according to your Subscription Size, the Project’s production, and your energy supply rate (as described in the applicable tariff or contract) from your Energy Supplier.
    - iv. While we have provided an estimated number of kilowatt-hours your subscription will generate each month, we do not guarantee a minimum number of kilowatt-hours over any period of time.
  - c. You may change your Utility Account for Bill Credit delivery by written notice to us, provided that your new account is in the same Utility territory as the existing Account or is

otherwise approved by us. Our acceptance of the change is contingent on Utility's approval of the change. The last bill for the former account and first bill for the new account will depend on the Utility's tariffs and procedures for disenrolling and enrolling subscriptions.

**5. Title, Production, and Maintenance of Project:**

- a. As between the Parties, we will claim and receive any and all tax, environmental or other credits, grants, subsidies, renewable energy credits (RECs), carbon offset credits, rebates or other benefits related to the Project or its output, and any other benefits or profits of owning the Project (including any capital appreciation), both presently and in the future. You will NOT have the option to buy any equipment of the Project at any time during or at the end of the Term.
- b. In addition, we will arrange for the long-term maintenance of the Project, insure the Project during its operation and bear the risk of loss, damage, theft, or destruction of the Project during the Term.
- c. We use an advanced energy model to predict the Estimated Production, measured in kilowatt-hours (kWh), from your Subscription Size. If we are notified that the Project will be out of service for more than three business days, then you will be notified in writing as soon as practicable of the estimated duration of the outage and the estimated production that will be lost due to the outage.
- d. This Section shall survive Agreement termination.

**6. Assignment:**

- a. We may assign, sell or transfer the Project and/or the rights and obligations under this Agreement to any person without your consent including making collateral assignments for security purposes, and you hereby consent to the assignment, sale, or transfer of the Project to any lender or financing party (including agents acting on their behalf) and the collateral assignment of our right, title and interest in and to this Agreement as security for any financing incurred by us or our affiliates.
- b. You may not sell, transfer or assign this Agreement, either in whole or in part to anyone without our express written consent; provided that you may assign this Agreement to another retail customer within the same Utility zone without incurring any fee by having an assignment form that we will provide executed by you and your transferee, pending acceptance of the transfer by your Utility.

**7. Termination for Default.** You will be in default if you fail to make a monthly payment within 60 days of the invoice date, or if you breach, fail to perform or comply with any material covenant, representation or agreement herein set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from us. If you are in default, we may terminate this Agreement and disenroll your subscription. If we terminate this Agreement, you may be charged the Price for all Bill Credits through the date of termination. In addition, we may sell Bill Credits to persons other than you and recover from you any loss in revenues. This Section shall not otherwise limit either Party's remedies at law or equity.

**8. Entire Agreement; Modifications in Writing; Survival:** This Agreement contains the Parties' entire agreement, and there are no other agreements between the Parties regarding the Project or the Bill Credit, either written or oral. We reserve the right from time to time to amend the Subscription Size to better reflect your expected annual electricity consumption or to designate a replacement Project; however, such amendment will not be effective unless or until you sign an updated Community Solar Disclosure Form. Any other modifications would require the written approval of both Parties, and at least 90 days notice before such modifications become effective. Any delay or

failure of a Party to enforce the obligations of the other Party under this Agreement shall not constitute a waiver of such obligations or a Party's right to enforce the same and shall not affect the validity of this Agreement. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable, upon request of either Party, the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, then with the consent of both Parties, the matter shall be resolved by arbitration and an arbitrator may reform the Agreement as the arbitrator deems just and equitable in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

9. **Change in Law:** Notwithstanding anything else in this Agreement, if there is a change in law that materially affects our ability to perform obligations under this Agreement or that materially reduces the value of the Bill Credits, we may amend this Agreement as necessary within our discretion on 90 days notice and providing all changes to this Agreement to you. You have a right to terminate without penalty within 90 days of our sending amendments under this provision by contacting us. For the purposes of this section, a change in law is a change federal, regional, state, or local statute, regulation, or guidance, or any decision or interpretation of an agency of such a government (including a court), including but not limited to decisions or interpretations of the Illinois Power Agency or its Adjustable Block Program program administrator.
10. **Governing Law; Dispute Resolution:** This Agreement is governed by the law of the State of Illinois without giving effect to the principles of conflict of laws that would require the application of any other law. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, the Parties agree to engage in good faith negotiations to resolve such dispute. If the Parties are unable to resolve such dispute through such negotiations, either Party may, within a reasonable time after the dispute has arisen, pursue all available legal and/or equitable remedies. Venue for any such legal disputes shall be proper only in the Circuit Court of Kane County, Illinois.
11. **Notices:** All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing or to the email address provided by you, shall be deemed delivered five business days after it was mailed (except notice provided by email shall be deemed delivered when sent), and shall be sent by any of the following methods: first class mail; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the Parties' addresses stated on page 1.
12. **Limitation of Liability and Warranty Disclaimer:** TO THE MAXIMUM EXTENT PERMITTED BY LAW
  - (A)(1) EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND WILL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO PROVIDER UNDER THIS AGREEMENT; AND (2) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. THIS AMOUNT OF LIABILITY IS EACH PARTY'S SOLE AND EXCLUSIVE REMEDY, AND EACH PARTY HEREBY WAIVES ALL OTHER REMEDIES OR DAMAGES AT LAW OR EQUITY; AND
  - (B) EXCEPT AS EXPRESSLY PROVIDED HEREIN, PROVIDER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ITS

OBLIGATIONS OR THE PROJECT. PROVIDER DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

13. **Cooperation:** You agree to cooperate with us, your Energy Supplier, and the Utility as reasonably necessary to ensure this Agreement complies with community shared solar laws and regulations.
14. **Authorization to Receive Historical Consumption Information.** During the Term of this Agreement, you will need to provide your electric utility account information. This information is needed to determine the solar production required to offset your usage; we may under Section 8 of this Agreement propose a different subscription size during Term to reflect changes in your usage patterns. You authorize Nexamp to request and review your historical electricity information from your local utility as long as you remain a customer under this Agreement. Your utility account information will not be shared with third parties. We reserve the right to update or adjust our utility data policy with notification if these changes impact you based on your contract or subscriber status. Our utility data policy can be found online at: <https://www.nexamp.com/privacy-policy>.
15. **Customer's Rights:** You understand that if you have complaints or questions that Nexamp is unable to resolve, you may contact the Illinois Shines Program Administrator by emailing [admin@illinoisshines.com](mailto:admin@illinoisshines.com) or by calling (877) 783-1820. You also have the right to contact the Illinois Power Agency at (312) 793-0263 or by visiting [www2.illinois.gov/sites/ipa](http://www2.illinois.gov/sites/ipa) or the Illinois Commerce Commission at (800) 524-0795 or by visiting [www.icc.illinois.gov](http://www.icc.illinois.gov).
16. **Customer Representations.** You hereby represent and warrant to us that (a) you have read and understand the terms of this Agreement and have had the opportunity to ask questions of us and to seek the advice of an attorney, if desired, (b) you are duly authorized to execute, deliver and perform this Agreement and such execution, delivery and performance does not violate any applicable law, (c) this agreement is your valid obligation and is enforceable against you in accordance with its terms, (d) your name is associated with the Utility Account and you have the full right, power and authority to enter into this Agreement, (e) you acknowledge that we are not making any representations or warranties concerning the tax implications of your subscription, (f) all information provided by you, including Utility and banking information, is accurate, true and complete in all respects, and (g) you have received, had an opportunity to ask questions about, understood, and signed the Community Solar Disclosure Form and have received the Illinois Shines brochure.

**Customer**

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

Name: \_\_\_\_\_

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

**Provider**

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

Name: Allan Telio

SVP of Community Solar

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

**Schedule A  
City of Aurora**

Meter Address	City, State, ZIP	Utility account number	Utility meter number	Subscription Size, kW (DC)	Subscription Size, kW (AC)	Estimated Production, kWh
119 S Constitution Dr.	Aurora, IL 60506	0795023059	230305245	86.5	62.2	125,800
501 N Orchard Rd.	Aurora, IL 60506	1251122069	230304535	48	34.5	69,800
1 N River 0 New York St	Aurora, IL 60506	2325012022	230288492	20.5	14.7	29,800
2765 Dorothy Dr	Aurora, IL 60506	5762059017	unmetered	0.5	0.4	700
1535 Kaimy Ct	Aurora, IL 60506	5762385012	unmetered	0.5	0.4	700
3089 Kelly Ct	Aurora, IL 60506	5762475011	unmetered	0.5	0.4	700
2450 N Farnsworth Ave	Aurora, IL 60505	6075683033	273691538	17.5	12.6	25,400
512 N Broadway Unit 1	Aurora, IL 60505	6162317040	272730398	5	3.6	7,300
1435 Southlawn Pl.	Aurora, IL 60506	2275160017	230303005	65	46.8	94,500
157 N Root St Unit LITS	Aurora, IL 60505	6169427003	unmetered	5	3.6	7,300
WS Titworth 3S North	Aurora, IL 60505	6255086005	unmetered	2.5	1.8	3,600
20 E Downer Pl	Aurora, IL 60505	7597109000	230200814	45	32.4	65,400
43 E Galena Blvd	Aurora, IL 60505	7597486048	230298681	6	4.3	8,700
0 W Stolp Ave 1N Benton	Aurora, IL 60506	8082188009	230125349	30	21.6	43,600
4 W New York St.	Aurora, IL 60506	8082447003	230301770	19	13.7	27,600
<b>Total</b>				<b>351.5</b>	<b>252.9</b>	<b>510,900</b>