

PINAL POWER PURCHASE AND ENERGY STORAGE AGREEMENT

BETWEEN

ARIZONA ELECTRIC POWER COOPERATIVE

AND

CITY OF MESA, ARIZONA

PINAL POWER PURCHASE AND ENERGY STORAGE AGREEMENT

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This Pinal Power Purchase and Energy Storage Agreement ("**Agreement**") is made and entered on _____, by and between Arizona Electric Power Cooperative, Inc., an Arizona nonprofit generation and transmission cooperative corporation (hereinafter referred to as "**AEPCO**") and City of Mesa, Arizona (hereinafter referred to as "**Participant**"). AEPCO and Participant are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party."

RECITALS

- A. AEPCO offered its Class A, B, and D Members the opportunity to acquire Solar Output from the **Generation Facility** and energy storage services ("**Energy Storage Services**" or "**ESS**") and related benefits from an approximately 400 MW_{AC}, co-located battery energy storage system (the "**Battery Energy Storage System**" or "**BESS**"). The Generation Facility and the BESS (collectively the "**Project**") located in Pinal County, Arizona, is further described on **Exhibit A** attached hereto.
- B. AEPCO, Participant and other Subscribers entered into the Pinal Solar and Storage Planning and Subscription Agreement, dated May 6, 2025 ("**Subscription Agreement**"), to provide for a third party ("**Service Provider**") to develop, own, operate, and sell the output from the Project to AEPCO, pursuant to the Power Purchase and Energy Storage Agreement, dated January 17, 2025, between AEPCO and Service Provider ("**Service Provider Agreement**").
- C. AEPCO will, in turn, sell the Product to Participant based on Participant's percentage Subscription Share (as defined below) of the Generation Facility and of the BESS pursuant to this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

1.1 Definitions. As used in this Agreement, the following terms, when capitalized, shall have the following meanings. Other capitalized terms used but not defined herein shall have their respective meanings as set forth in the Subscription Agreement or the Service Provider Agreement as defined herein. "**AEPCO**" has the meaning set forth in the Preamble.

"**AEPCO Permitted Mortgagee**" has the meaning specified in Section 10.2(a).

"**Affiliate**" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect

ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“**Agreement**” means this Pinal Power Purchase and Energy Storage Agreement between Participant and AEPCO, including all exhibits hereto, entered into between Participant and AEPCO, for the purpose of facilitating the purchase and sale of Product from the Project.

“**Ancillary Services**” means operating reserves, regulation and automatic generator control, reactive supply, voltage control, frequency response, and other products associated with the electrical generation, capacity and energy that the Project is capable of providing and all other beneficial outputs of the Project not required for the operation of the Project.

“**Approvals and Permits**” means all applicable approvals, consents, franchises, permits, licenses, certificates, inspections, and authorizations required by any utility, Governmental Authority, or any other entity, including any modifications thereto, arising out of, or related to, the design, installation, operation, maintenance, and/or repair of the Project.

“**Availability Guarantee**” means the guarantee provided by Service Provider pursuant to Annex B of the Service Provider Agreement.

“**Bankrupt**” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, and such petition filed or commenced against it is not withdrawn or dismissed within thirty (30) days after such filing; (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“**Battery Energy Storage System**” or “**BESS**” means the battery arrays, battery system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity to the Delivery Point and all associated equipment, facilities, interconnection facilities, tangible assets, and contract rights associated with the ESS.

“**Business Day**” means any day other than Saturday, Sunday, or legal holidays for federally chartered banks in the State of Arizona.

“**Capacity Rights**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Project is supplying to or located.

“**Charging Energy**” means all energy delivered to the Receipt Point for storage and later delivery as Discharge Energy regardless of the source of such energy, inclusive of any energy used for transformation and transmission losses.

“**Claiming Party**” has the meaning specified in Section 7.1.

“Commercial Operation” means that: 1) the Project has met the requirements to achieve commercial operation pursuant to the Service Provider Agreement, 2) the Project is capable of providing energy from the Generation Facility and the BESS at the Delivery Point, and 3) AEPCO has provided notice of achievement of commercial operation to Participant.

“Commercial Operation Date” means the date upon which the conditions have been met that establish the “Commercial Operation Date” in the Service Provider Agreement.

“Costs” means, with respect to the Non-Defaulting Party, the actual and documented out-of-pocket brokerage fees, commissions and similar transaction costs and expenses reasonably incurred in terminating any arrangement under this Agreement or entering into new arrangements that replace the Product as a result of, and all reasonable attorneys’ fees incurred by the Non-Defaulting Party in connection with, the termination of this Agreement pursuant to Section 6.2.

“Defaulting Party” has the meaning specified in Section 6.1.

“Delivery Point” means the Delivery Point as further described in **Exhibit B**. For the avoidance of doubt, Charging Energy delivered to the Receipt Point shall be deemed to have been delivered at the Delivery Point.

“Discharge Energy” means all energy discharged by the BESS, as measured at the Metering Point, less Station Use Energy for the BESS and less transformation and transmission losses.

“Economic Curtailment Energy” has the meaning set forth in Section 4.10.

“Economic Curtailment Schedule” has the meaning set forth in Section 4.10.

“Effective Date” means the date upon which this Agreement is executed between the Parties.

“Emergency Condition” refers to a situation in which AEPCO has exhausted all available resource options and can no longer meet its expected load obligations, or when an abnormal system condition exists that requires automatic or immediate manual action to prevent or limit the failure of transmission facilities or generation resources that could adversely impact the reliability of the electric system.

“Energy Storage Services” or **“ESS”** means the acceptance of Charging Energy at the Receipt Point, the storing of energy in the BESS, and the delivery of Discharge Energy from the BESS at the Delivery Point in compliance with the ESS Unit Capabilities (as that term is defined Service Provider Agreement), and subject to the terms and conditions of the Service Provider Agreement.

“Environmental Attributes” means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental nature, including Renewable Energy Certificates, that, at any point during the Term, are created or otherwise arise from the Generation Facility’s delivery of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical,

or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of energy. Environmental Attributes include those currently existing or arising after the Commercial Operation Date under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other person.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Event of Default” has the meaning specified in Section 6.1 of this Agreement.

“Expected Commercial Operation Date” means December 1, 2027, as that date may be extended by written agreement of the Parties or pursuant to the terms of the Service Provider Agreement.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on economic hardship, including, without limitation, (i) the loss of Participant’s markets; (ii) Participant’s inability to economically use or resell the Product purchased hereunder; (iii) AEPCO’s ability to sell the Product at a price greater than the rates set forth in **Exhibit C**, or (iv) any amendment, modification, passage of a superseding act, or repeal of any applicable law related to Environmental Attributes.

“Generation Facility” means the solar photovoltaic electric generation plant, including all electric power generation equipment, controls, meters, switches, connections, conduit, wires and other equipment connected to the transmission provider’s interconnection facilities and installed and operated by Service Provider as a fixture on the Premises for the purposes of providing electric power to Participant under the Agreement. If the final capacity of the Generation Facility is different than 400 MW_{AC}, the Parties shall adjust the Participant’s Subscription Share and final capacity in accordance with Section 3.4 of the Subscription Agreement.

“Governmental Authority” means any federal, state, or local government exercising jurisdiction over either Party or the Generation Facility, including any agency, court, or instrumentality of any such government exercising executive, legislative, judicial, regulatory, or administrative functions. Governmental Authority shall not include any entity that is a Party to this Agreement.

“Indemnified Party” has the meaning specified in Section 8.1.

“Indemnifying Party” has the meaning specified in Section 8.1.

“**Interest Rate**” means, for any date, the lesser of (a) the applicable rate of interest under AEPCO’s Committed Line of Credit, or (b) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) or (c) the maximum rate permitted by applicable law.

“**Metering Point**” means the points as measured by metering devices as further described in Section 4.4.

“**MW_{AC}**” means megawatt alternating electric current.

“**MWh**” means megawatt-hour(s).

“**Non-Defaulting Party**” has the meaning specified in Section 6.2.

“**OATT**” means AEPCO’s Open Access Transmission Tariff, as it may be modified from time to time.

“**O&C Committee**” has the meaning specified in Section 3.5.

“**Participant**” has the meaning set for in the Preamble.

“**Participant’s Agent**” means an individual or entity, other than AEPCO, if applicable, authorized to act on behalf of a Participant within the scope of authority granted in writing by the Participant, as may be identified in **Exhibit F**.

“**Premises**” means the land on which the Project is located.

“**Product**” means, collectively, the Solar Output and the Storage Product.

“**Project**” has the meaning set forth in the recitals.

“**Prudent Utility Practice(s)**” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the solar power generation industry serving public utilities, or approved by WECC and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition.

“**Receipt Point**” means the Project’s Energy Storage System Metering Point.

“**Renewable Energy Certificate**” or “**REC**” is the certificate that evidences the ownership of Environmental Attributes that have been generated by the Project and certified by the Western Renewable Energy Generation Information System (WREGIS).

“**Replacement Price**” means the price at which Participant, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Solar Output not delivered by

AEPCO, or at Participant's option, the market price at the Delivery Point for such Solar Output not delivered as determined by Participant in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Participant be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize AEPCO's liability. For the purposes of this definition, Participant shall be considered to have purchased a replacement to the Solar Output to the extent Participant shall have entered into one or more arrangements in a commercially reasonable manner whereby Participant repurchases its obligation to sell and deliver the Solar Output to another party at the Delivery Point or any other mutually agreed upon delivery point in the instance that the Delivery Point is not the most commercially reasonable delivery point at the time of replacement.

"Representative" means a Party's employee, officer, director, member, manager, contractor, agent, accountant, or attorney.

"Revised Subscription Share" has the meaning set forth in Section 6.5.

"Sales Price" means the price at which AEPCO, acting in a commercially reasonable manner, resells at the Delivery Point any component of the Product not received by Participant (including Economic Curtailment Energy), deducting from such proceeds any (i) costs reasonably incurred by AEPCO in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by AEPCO in delivering such Product to the third party purchasers, or at AEPCO's option, the market price at the Delivery Point for such Product not received as determined by AEPCO in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall AEPCO be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Participant's liability. For purposes of this definition, AEPCO shall be considered to have resold such Product to the extent AEPCO shall have entered into one or more arrangements in a commercially reasonable manner whereby AEPCO repurchases its obligation to purchase and receive the Product from another party at the Delivery Point. If the Delivery Point is not the most commercially reasonable delivery point at the time of resale, the Parties may agree to another delivery point.

"Scheduled Outage" has the meaning specified in Section 3.3.

"Service Provider" has the meaning set forth in the recitals.

"Service Provider Agreement" has the meaning set forth in the recitals and is expressly subject to Section 10.16 in its entirety.

"Solar Output" means the Participant's Subscription Share of all of the alternating current electricity and VAR (KVar) output produced by the Generation Facility, less Station Use Energy for the Generation Facility and less transformation and transmission losses, if any, on a unit-contingent basis; Solar Output includes all Capacity Rights and Environmental Attributes generated by the Generation Facility and shall be delivered either 1) as metered at the Delivery Point in accordance with Section 4.4, or 2) delivered as Charging Energy to, and metered at, the Receipt Point.

“**Station Use Energy**” means the energy used to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Project during periods in which the Project is idle (meaning that the Solar Facility is not generating and the ESS is not charging or discharging, as applicable, in accordance with Service Provider Agreement). Service Provider is solely responsible, at its sole cost and expense, for procuring and providing all Station Use Energy.

“**Storage Product**” means the Energy Storage Services and all associated Capacity Rights, Ancillary Services, and Environmental Attributes.

“**Subscribers**” shall mean all entities that have a Subscription Share of the Solar Output and/or the Storage Product.

“**Subscription Agreement**” has the meaning set forth in the recitals.

“**Subscription Share**” shall mean a percentage share of the cost responsibility and right to the Solar Output of the Generation Facility which for Participant is 6.25% and/or to the Storage Product of the BESS which for Participant is 5.00%, as may be modified from time to time pursuant to Section 2.1(c) and Section 6.5.

“**Taxes**” means any federal, state, and local ad valorem, property, occupation, generation, privilege, sale, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on AEPCO’s revenues due to the sale of any component of the Product under this Agreement, which shall be AEPCO’s responsibility.

“**Term**” has the meaning specified in Section 2.2.

“**Test Energy**” means all Solar Output generated by the Generation Facility and delivered to Participant and all Discharge Energy during the Test Period.

“**Test Period**” means the period commencing on the day the Generation Facility is energized for a period of no more than one-hundred and twenty (120) days prior to the Commercial Operation Date.

“**Unscheduled Outage**” has the meaning specified in Section 3.4.

“**Western Electricity Coordinating Council**” means the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection

“**WECC Preschedule Calendar**” means the annual preschedule calendar set by WECC that defines the timing for day-ahead trading and scheduling of energy around holidays and the beginning of new months.

1.2 Usage of Certain Terms and Phrases. Unless the context or express provisions of this Agreement otherwise requires, (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby” and derivative or similar words

refer to this entire Agreement; and (d) the terms “Article,” “Provision” or “Section” refer to the specified Article, Provision or Section of this Agreement. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Any reference to a person or firm includes its successors and assigns. References to articles, sections, exhibits, appendices, schedules, and attachments means the articles, sections, exhibits, appendices, schedules, and attachments of this Agreement. References to this “Agreement” include any relevant articles, sections, exhibits, appendices, schedules, and attachments of this Agreement. If any payment, or performance of any non-monetary obligation, is due on a day that is not a Business Day, it shall be deemed due the next following Business Day. “Include” or “including” shall be deemed to be followed by “without limitation.”

ARTICLE II. CONDITIONS, TERM, TERMINATION

2.1 Conditions Precedent; Replacement of Subscription Agreement; Step-up Obligation.

- a) The effectiveness of this Agreement and the Parties’ obligations hereunder shall be expressly conditioned upon approval by each Party’s governing board and receipt of all necessary Approvals and Permits.
- b) The Parties acknowledge and agree that on the Commercial Operation Date, the terms and conditions of the Subscription Agreement shall be superseded in their entirety by the terms and conditions of this Agreement, except that Section 7 of the Subscription Agreement and any other provisions of the Subscription Agreement required to give effect to the intent of the parties as to Section 7 shall survive and remain in full force and effect in accordance with the terms thereof.
- c) The Parties acknowledge and agree that Participant (and each Subscriber to any component of the Product pursuant to the terms of such Subscriber’s power purchase and energy storage agreement with AEPCO) is obligated to, and shall, increase its Subscription Share to the Revised Subscription Share in the event that AEPCO experiences an event of default with a Subscriber (“**Step-up Obligation**”), as provided in Section 6.5.
- d) Intentionally Blank.

2.2 Term. This Agreement shall commence on the Effective Date and shall continue for a period that is twenty (20) years from the Commercial Operation Date (“**Term**”). Upon termination of the Agreement, Participant shall have no further obligations or rights related to the Product.

2.3 Termination. In addition to a termination for an Event of Default under Article VI, AEPCO may terminate this Agreement without liability to Participant if AEPCO terminates the Service Provider Agreement due to a Service Provider event of default. Participant may terminate this Agreement without liability to AEPCO if AEPCO terminates the Service Provider Agreement due to a Service Provider event of default under the Service Provider Agreement. In the event of a termination of this Agreement due to a termination of the Service Provider Agreement, AEPCO shall pass through any damages, liquidated damages or termination payments received from Service Provider, less any costs

reasonably incurred by AEPCO in collecting such payments or damages, to Participant, based on Participant's Subscription Share.

ARTICLE III. INSTALLATION AND OPERATION OF THE GENERATION FACILITY AND THE BESS

- 3.1 Service Provider Agreement.** As between the Parties, AEPCO shall be directly responsible for all costs and the performance of all obligations under the Service Provider Agreement.
- 3.2 Commercial Operation.** AEPCO shall use commercially reasonable efforts to cause the Project to achieve Commercial Operation on or before the Expected Commercial Operation Date. If Commercial Operation will not be achieved by the Expected Commercial Operation Date, AEPCO shall provide notice to Participant and shall work with Service Provider to cause the Project to achieve Commercial Operation. Further, subject to Article VII, to the extent failure to achieve Commercial Operation by the Expected Commercial Operation Date entitles AEPCO to liquidated damages under the Service Provider Agreement ("Delay Damages" as defined in the Service Provider Agreement), AEPCO shall pass such liquidated damages through to Participant based on Participant's Subscription Share.
- 3.3 Interruption of Service – Scheduled Outages.** The scheduled interruption from time to time of the Project may be necessary in order to install, operate, maintain, or repair the Project ("**Scheduled Outages**"). AEPCO shall provide Participant with a notice of the Scheduled Outages on an annual basis and shall update such notice quarterly to reflect any known changes to the Scheduled Outages. AEPCO shall consult with Participant regarding any Scheduled Outage periods and shall use commercially reasonable efforts to i) coordinate Scheduled Outages with Service Provider in a manner which minimizes cost and disruption to Participant, and ii) minimize the length, duration, and scope of the outages. AEPCO shall have no liability or otherwise have an obligation to deliver the Product to Participant in the event of a Scheduled Outage.
- 3.4 Interruption of Service – Unscheduled Outages.** The interruption from time to time of the Project may be required in the case of an emergency or unexpected interruption of the Project ("**Unscheduled Outages**"). In the event of an Unscheduled Outage, AEPCO will use commercially reasonable efforts to respond within one (1) Business Day following notification either by remote monitoring systems or by Participant of such Unscheduled Outage, and will cause Service Provider to complete needed repairs as soon as reasonably practicable and in accordance with Prudent Utility Practice and the terms of the Service Provider Agreement to restore the Project to operation. AEPCO shall have no liability or otherwise have an obligation to deliver the Product to Participant in the event of an Unscheduled Outage. For the avoidance of doubt, Unscheduled Outages include curtailments of the Solar Output or limitations of the BESS from accepting Charging Energy or releasing Discharge Energy imposed by a transmission provider, balancing authority area, reliability coordinator, or similar entity for reliability, emergency, or similar purposes.

- 3.5 Operation and Construction Committee.** The Pinal Operation and Construction Committee (“**O&C Committee**”) formed pursuant to Section 7 of the Subscription Agreement shall continue for the Term of this Agreement and shall have the same representation and responsibilities with respect to the operation and maintenance of the Generation Facility and the BESS as provided in the Subscription Agreement.
- 3.6 Test Energy.** Participant shall purchase its Subscription Share of all Test Energy from the Generation Facility provided at the Delivery Point at fifty percent (50%) of the rates provided for in **Exhibit C** and Participant shall be responsible for costs and/or credits of its Subscription Share of Discharge Energy associated with Test Energy from the Generation Facility.

ARTICLE IV. POWER PURCHASE AND ENERGY STORAGE REQUIREMENT

4.1 Purchase and Sale of the Product.

- a) Commencing on the Commercial Operation Date and continuing throughout the Term, AEPCO shall sell to Participant and deliver to Participant at the Delivery Point, and Participant shall receive and purchase from AEPCO, at the rates provided for in **Exhibits C and D**, Participant’s Subscription Share of the Product, pursuant to the terms of this Agreement.
- b) If AEPCO fails to deliver any component of the Product and such failure is not excused under the terms of this Agreement or the Service Provider Agreement, AEPCO shall provide a credit to the Participant for the cost difference, if the Replacement Price exceeds the applicable rate in **Exhibit C**, but Participant shall not be entitled to terminate this Agreement or to withhold payments required to be made pursuant to this Agreement except as provided in Section 6.1(a). Participant shall provide reasonable proof of the Replacement Price to AEPCO and thereafter, AEPCO shall provide a credit to Participant on the next monthly billing statement.
- c) If Participant fails to receive any component of the Product and such failure is not excused under the terms of this Agreement, AEPCO shall make commercially reasonable efforts to remarket the Product at a point of delivery that maximizes the net economic value of the Product, but AEPCO shall not be entitled to terminate this Agreement or to withhold payments required to be made pursuant to this Agreement, except as provided in Section 6.1(a). If AEPCO can successfully remarket the Product to a Subscriber or other entity, AEPCO will calculate the difference between the cost of the Product using the rates set forth in **Exhibit C** and the Sales Price. If the rates set forth in **Exhibit C** exceed the Sales Price, AEPCO shall bill and the Participant shall pay, the difference in the next monthly billing statement. If the rates set forth in **Exhibit C** are less than the Sales Price, then AEPCO shall provide a credit for the difference to Participant on the next monthly billing statement. If the Product is sold without RECs pursuant to this Section 4.1(c), Participant shall be entitled to the RECs associated with such sale.

- d) In the event that AEPCO cannot remarket the Product, the Sales Price shall be zero, unless AEPCO implements a Buyer Curtailment under the Service Provider Agreement, in which case, Participant shall pay AEPCO for its share of Deemed Energy for Participant's failure to receive per Article II of the Service Provider Agreement, plus applicable Production Tax Credit (PTC) value, as defined in the Service Provider Agreement.

4.2 Generation Delivery.

- a) Solar Output produced by the Generation Facility will be metered and allocated based on the Subscription Share of Participant and delivered to either: (i) Participant at the Delivery Point; or (ii) the BESS for storage and later delivery to Participant, each in accordance with Participant's or Participant's Agent's scheduling instructions or, in the absence of such scheduling instructions, in accordance with AEPCO's good faith business judgment.
- b) Participant shall arrange and be responsible for any third-party transmission service required to deliver power from the Delivery Point to Participant load and shall schedule or arrange for scheduling services with all applicable transmission providers to accept scheduled energy from the Delivery Point, and Participant shall be responsible for all costs or charges imposed on or associated with the transmission service after the Delivery Point. In addition, Participant shall provide AEPCO with timely and adequately detailed information necessary for AEPCO to meet its responsibility to submit e-tags associated with delivery of the scheduled energy to the Participant. Participant and AEPCO shall agree in writing upon the format and means of communication of such information.
- c) AEPCO shall provide Generator Imbalance Service, at the rates and terms provided in its OATT, for any difference between scheduled energy and Participant's allocated Solar Output.
- d) In the event AEPCO incurs cost for ancillary services in accordance with the AEPCO OATT, Participant shall be responsible to AEPCO for paying for such ancillary services pursuant to the OATT.
- e) AEPCO will schedule Discharge Energy in the overall best interest of the Subscribers based on optimization of the aggregate schedules of Participant and all Subscribers and in accordance with Prudent Utility Practice.

4.3 Discharge Energy Delivery.

- a) Discharge Energy will be metered at the Metering Point and allocated based on the Subscription Share of Participant and delivered to Participant at the Delivery Point.
- b) AEPCO shall bill Participant for any Discharge Energy delivery charge as set forth in **Exhibit D.**
- c) Except as provided in this Section 4.3(c), Participant shall arrange and be responsible for any third-party transmission service required to deliver power from the Delivery Point to Participant load and shall schedule or arrange for scheduling services with all applicable transmission providers to accept scheduled energy from the Delivery Point, and shall be responsible for all costs or charges imposed on or associated with the transmission service after

the Delivery Point. In addition, Participant shall provide AEPCO with timely and adequately detailed information necessary for AEPCO to meet its responsibility to submit e-tags associated with delivery of the scheduled energy to the Participant. Participant and AEPCO shall agree in writing upon the format and means of communication of such information.

- d) AEPCO shall provide imbalance services, at the rates and terms provided in its OATT, for Participant's Subscription Share of any difference between the Project's scheduled and metered energy.
- e) In the event AEPCO incurs cost for other ancillary services in accordance with its OATT, Participant shall be responsible to AEPCO for paying for such ancillary services pursuant to the OATT.

4.4 Metering. AEPCO shall cause to be procured, installed, and maintained all meters that may be necessary for measuring the Solar Output, Charging Energy, Discharge Energy, and Station Use Energy pursuant to Section 5.1 of the Service Provider Agreement. Any adjustment made for inaccurate meters pursuant to Section 5.3 of the Service Provider Agreement shall be applied to Participant according to Participant's Subscription Share. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered, in accordance with Section 4.6(d). Such correction, when made, shall constitute full adjustment of any claim between AEPCO and Participant arising out of such inaccuracy of metering equipment.

4.5 Billing and Payment.

- a) As soon as practicable after the end of each calendar month, AEPCO will render to Participant and Participant's Agent an invoice, or as a separate line-item on its existing monthly bill, for the net payment obligations, if any, incurred hereunder during the preceding month. All invoices shall be due and payable in accordance with AEPCO's current billing procedures and invoice instructions, or otherwise, on or before the later of the twentieth (20th) day of each month, or the tenth (10th) day after receipt of the invoice by the Participant or the Participant's Agent. Participant will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by AEPCO. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date but excluding the date the delinquent amount is paid in full. Any discrepancies regarding amounts billed in an invoice shall be resolved in the next month's invoice, or as soon as possible thereafter.
- b) Participant shall have an unconditional obligation to make all payments to AEPCO required hereunder at the rates and charges and on the terms and conditions set forth herein and in Exhibits C and D, based on Participant's Subscription Share of the Product. Participant shall make all payments of charges for the Product provided for under this Agreement, including without limitation, rates and charges resulting from the default of one or more Subscribers or otherwise, as the case may be, in a timely manner pursuant to and to the extent of AEPCO's obligations under the Service Provider Agreement. Payments by Participant hereunder, and the obligation to pay, shall be absolute and unconditional and shall not be subject to any reduction, whether by offset, set-off, recoupment or otherwise, and shall not be conditioned upon

performance or limited by Participant under any other wholesale power sales, power purchase or power marketing agreements entered into by AEPCO.

- c) Notwithstanding anything to the contrary in this Agreement, AEPCO may review the rates and charges for electric energy and capacity provided hereunder. If such rates are insufficient to pay all of AEPCO's costs and liabilities under the Service Provider Agreement and AEPCO's development costs, including legal fees (unless such legal fees relate to gross negligence by AEPCO), in connection with the Project, AEPCO may revise such rates so that amounts paid under this Agreement, together with amounts paid under all other Subscribers' agreements, are sufficient to enable AEPCO to pay all of such obligations. If such rates or charges are to be revised, AEPCO shall cause a notice in writing to be provided to Participant at least ninety (90) days prior to the effective date of such revisions, which notice shall set forth the proposed revisions of the rates or charges with the effective date thereof, and the basis upon which the rates or charges are proposed to be adjusted and set. Participant agrees that any such revised rates and charges set by AEPCO pursuant to its authority herein shall be substituted for the rates herein provided, and Participant agrees to pay for the Product provided by AEPCO hereunder after the effective date of any such revised rates and charges pursuant to such revised rates and charge.
- d) Section 4.5 (b) and (c) shall not be construed to release AEPCO from the performance of any of its obligations established in this Agreement or, except to the extent expressly provided in this Agreement, prevent or restrict Participant from bringing suit for enforcement of, or damages arising from, any rights that it may have against AEPCO under this Agreement or under any provision of law, and to compel AEPCO to pay any damages awarded by a court of competent jurisdiction as awarded in a final judgment.

4.6 Audit Rights.

- a) Participant, through its authorized representatives, shall have the right to examine and copy the records of AEPCO to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder. All costs and expenses of such audits will be the sole responsibility of the Participant. Participant will have the right to conduct such an audit no more frequently than once each calendar year.
- b) Upon request, AEPCO shall provide to Participant statements evidencing the quantities of Solar Output, Charging Energy, and Discharge Energy as metered at the Metering Point and all costs contained within the rates set out in **Exhibit C**.
- c) AEPCO will maintain adequate financial records and documents to support all costs billed to Participant. Such financial records and documents will be maintained for a period of at least three (3) years following the performance and/or satisfaction of obligations arising under this Agreement or until any audit in progress is completed.
- d) If any statement is found to be inaccurate, a corrected statement shall be issued within thirty (30) days after resolution of the audit findings and any amount due by either Party to the other Party thereunder will be promptly paid, without interest, no later than the thirtieth (30th) day after receipt of the corrected statement. Notwithstanding the foregoing, no adjustment shall be

made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within three (3) years after the date of such statement or payment.

- 4.7 Liquidated Damages.** To the extent AEPCO is entitled to liquidated damages due to a failure of the Generation Facility or the BESS to meet the Availability Guarantee as defined in the Service Provider Agreement, AEPCO shall pass such liquidated damages through to Participant based on Participant's Subscription Share. Liquidated damages shall be applied as an offset to Participant's payment obligations, if any, incurred and owing under this Agreement and shall be reflected on Participant's invoice once such liquidated damages are received by AEPCO. In the event liquidated damages are expected to be greater than Participant's incurred and owing payment obligation for two monthly billing cycles under this Agreement, the remaining liquidated damages shall be paid to Participant within thirty (30) days of such determination. AEPCO shall use commercially reasonable efforts to enforce its right to liquidated damages on behalf of the Subscribers and Participant. For the avoidance of doubt, all liquidated damages recovered pursuant to the Availability Guarantee shall be passed to Subscribers (and Participant) less any costs AEPCO reasonably incurs to collect liquidated damages.
- 4.8 Solar Forecast.** AEPCO shall share the forecast delivered by Service Provider or Service Provider's agent to Participant as soon as practical.
- 4.9 Operation and Scheduling of BESS.** Participant or Participant's Agent shall provide AEPCO with an hourly schedule of targeted charging quantities and discharging quantities for a future time period ("**Participant Requested BESS Schedule**") in accordance with the WECC Preschedule Calendar for any day during which the Participant Requested BESS Schedule will be dispatched.
- a) Participant or Participant's Agent may purchase or otherwise procure or supply any energy from the wholesale market or other resources for delivery to and storage in the BESS and shall retain title to and risk of loss of any such energy while it is stored in the BESS, unless such loss is occasioned by AEPCO's or Service Provider's negligence, gross negligence or willful misconduct in operating and maintaining the BESS. For avoidance of doubt, Participant is responsible for transmission to import Charging Energy from sources other than the Generating Facility to the Receipt Point.
- b) In the absence of sufficient supply scheduled to the BESS, AEPCO will adjust the Participant Requested BESS Schedule down to match the total supplied quantity.
- 4.10 Participant's Economic Curtailment.** Participant or Participant's Agent may provide AEPCO with an hourly schedule of targeted reductions ("**Economic Curtailment Schedule**") of Solar Output ("**Economic Curtailment Energy**") for a future time period no later than one (1) day prior, and in accordance with the WECC Preschedule Calendar, to any day during which the targeted reductions of Solar Output will take place.
- a) AEPCO will first attempt to remarket Economic Curtailment Energy to other Subscribers, then attempt to remarket the Economic Curtailment Energy to other entities. If AEPCO can successfully remarket the Economic Curtailment Energy to a Subscriber or other entity,

AEPCO will calculate the difference between the cost of the Economic Curtailment Energy calculated using the rates set forth in **Exhibit C** and the Sales Price of the Economic Curtailment Energy. If the cost of the Economic Curtailment Energy calculated using the rates set forth in **Exhibit C** exceeds the Sales Price of the Economic Curtailment Energy, AEPCO shall bill and the Participant shall pay, the difference in the next monthly billing statement. If the Sales Price of the Economic Curtailment Energy exceeds the cost of the Economic Curtailment Energy calculated using the rates set forth in **Exhibit C**, then AEPCO shall provide a credit to Participant on the next monthly billing statement. If the Economic Curtailment Energy is sold without RECs pursuant to this Section 4.10(a), Participant shall be entitled to the RECs associated with such Economic Curtailment Energy.

- b) In the event that AEPCO cannot remarket the Economic Curtailment Energy, the Sales Price shall be zero, unless AEPCO implements a Buyer Curtailment under the Service Provider Agreement, in which case, Participant shall pay AEPCO for its share of Deemed Energy for Participant's curtailment per Article II of the Service Provider Agreement, plus applicable Production Tax Credit (PTC) value, as defined in the Service Provider Agreement.

4.11 AEPCO's Use of Participant BESS Capacity. For any day that Participant elects not to charge or discharge any or all of its Participant Share of the BESS Capacity, AEPCO shall not utilize Participant's Share of BESS Capacity without Participant's express written permission, unless there is an energy or transmission Emergency Condition. If AEPCO utilizes Participant's Share of the BESS Capacity in an Emergency Condition, AEPCO shall pay Participant for such use of energy and/or capacity at the replacement cost for the hours the BESS Capacity was originally scheduled by Participant or at the applicable real-time locational marginal price if Participant's BESS Capacity was not scheduled.

ARTICLE V. REPRESENTATIONS AND WARRANTIES; TITLE AND RISK OF LOSS

5.1 Representations and Warranties. On the Effective Date and on the Commercial Operation Date, each Party represents and warrants to the other Party that:

- a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- b) neither the execution, delivery or performance of this Agreement nor compliance herewith will (a) violate any provision of the certificate of formation or operating agreement (or other comparable governing documents) of such Party, (b) result in a violation, breach, or termination of, or constitute (with or without notice or lapse of time or both) a default under (or give rise to any right of termination, cancellation, acceleration, or any obligation to repay), any of the terms, conditions, or provisions of any indenture, mortgage, note, bond, encumbrance, license, contract, lease, franchise, permit, or other agreement to which such Party is a party, or (c) violate any order, writ, judgment, injunction, decree, statute, ordinance, rule, or regulation of any Governmental Authority applicable to such Party;
- c) the execution, delivery and performance of this Agreement is within its powers, has been duly authorized by all necessary action, and does not violate any of the terms and conditions in its

governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

- d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it, which would result in it being or becoming Bankrupt;
- f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product referred to;
- j) the material economic terms of this Agreement are subject to individual negotiation by the Parties; and
- k) it has the financial capacity, including sufficient funds available, to perform all of its obligations under this Agreement.

5.2 Title and Risk of Loss.

- a) Title to and risk of loss related to the Solar Output shall transfer from AEPCO to Participant at the Delivery Point. AEPCO warrants that Solar Output will be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.
- b) Title to and risk of loss related to Charging Energy and Discharge Energy shall remain at all times with Participant, subject to the provisions of Section 4.9(a). Title to and risk of loss related to all other components of the Storage Product shall transfer from AEPCO to Participant at the Delivery Point. AEPCO warrants that it will deliver to Participant the Storage Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point, except to the extent such liens, security interests, claims or encumbrances are attached to the Charging Energy when purchased by Participant.

5.3 Legal and Financial Funding Opinion. Prior to the execution of this Agreement, Participant shall provide an opinion from its legal counsel affirming subsection a and b below, and an opinion of its chief financial officer, legal counsel, senior financial officer, or department director (or similar position overseeing the utility) affirming subsection c below:

- a) Participant has obtained proper authorization under its governance documents for entering into and performing this Agreement;
- b) Participant, pursuant to the Agreement, can be sued and held liable for damages for its breach or non-performance of contractual obligations under this Agreement, and
- c) Based on its current financial position and resources as well as future economic forecasts, Participant anticipates having sufficient available, unrestricted funds to satisfy its payment obligations under this Agreement.

ARTICLE VI. EVENTS OF DEFAULT, REMEDIES

6.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (the “Defaulting Party”), the occurrence of any of the following:

- a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after receipt of written notice of the failure to make payment;
- b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such representation or warranty is not cured within sixty (60) calendar days after the other Party (the “Non-Defaulting Party”) gives the Defaulting Party a notice of the default;
- c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within sixty (60) calendar days after written notice, unless, upon receiving such written notice, the receiving Party notifies the other Party that a Dispute exists as to whether an Event of Default under this Section 6.1(c) has occurred, in which case the Parties shall follow the procedures in Section 10.6 prior to either Party declaring an Event of Default;
- d) such Party becomes Bankrupt;
- e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- f) Service Provider terminates the Service Provider Agreement due to an AEPCO event of default.

g) AEPCO fails to provide a bill credit to Participant when due under Section 6.2(a).

6.2 Remedies. The following remedies are available pursuant to this Agreement upon an Event of Default:

- a) If AEPCO fails to provide any component of the Product as required hereunder, AEPCO shall promptly provide notice to Participant upon learning of a failure to deliver such component of the Product and use its best efforts to restore service to Participant. If AEPCO is, in AEPCO's reasonable discretion, unable to restore or provide substitute service, AEPCO shall provide a bill credit to Participant for the reasonable direct and verifiable costs incurred by Participant to obtain and replace such component of the Product that AEPCO was unable to restore or provide, but Participant shall not be entitled to terminate this Agreement or to withhold payments required to be made pursuant to this Agreement. In the event AEPCO's failure to provide any component of the Product is due to any action or inaction by the Developer, the bill credit shall be limited to the amounts that AEPCO can recover from the Developer, less AEPCO's costs of recovering such amounts. A failure by AEPCO to provide a bill credit to Participant when due under this Section 6.2(a) shall be an Event of Default.
- b) If an Event of Default under Section 6.1(a) shall have occurred and be continuing, the Non-Defaulting Party shall have the right but not the obligation to (i) withhold any payments due to the Defaulting Party under this Agreement, (ii) suspend performance, and (iii) terminate this Agreement. The rights of the Non-Defaulting Party are cumulative.
- c) Upon the occurrence of an Event of Default by Participant, and consistent with subsection (e) below, AEPCO shall have the right to sell any component of the Product to a third person (including any Subscribers) free and clear of any claims by Participant for the period during which AEPCO suspends performance hereunder, and Participant will make commercially reasonable efforts to facilitate AEPCO's access to any transmission rights or facilities that may be required to make such sales, provided the net proceeds of such sales shall be credited against any setoff amounts owing from Participant to AEPCO.
- d) Upon termination of the Agreement, the Non-Defaulting Party shall have the right to receive from the Defaulting Party direct damages incurred by the Non-Defaulting Party in connection with an Event of Default, including during any applicable cure period. Such damages shall include the present value of the economic loss to it, including Costs, resulting from termination of this Agreement (if applicable).
- e) Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof. In the event the Product is not purchased or accepted by Participant, "commercially reasonable efforts" by AEPCO shall require AEPCO to use commercially reasonable efforts to maximize the value of the Product.

6.3 No Waiver. No waiver of any Event of Default by either Party shall be construed as a waiver of any subsequent Event of Default, and the failure to exercise any right or remedy hereunder shall not waive the right to exercise such right or remedy thereafter.

6.4 Limitation of Liability. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the Party's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the Party's liability shall be limited to direct damages only. Such direct damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss. Notwithstanding anything to the contrary, the Parties retain their rights to injunctive or equitable relief to the extent such relief is expressly permitted under this Agreement.

6.5 Participant Step-Up Obligations. If an Event of Default has occurred with respect to a Subscriber under such Subscriber's power purchase and energy storage agreement with AEPCO related to the Project, a) AEPCO shall first use any available working capital or letter of credit from the defaulting Subscriber to cover any losses resulting from the Event of Default, b) AEPCO shall next attempt to remarket the Subscription Share of such Subscriber to other Subscribers, c) AEPCO shall then attempt to remarket any remaining portion of the Subscription Share of such Subscriber to third parties, and d) if there is any remaining portion of the Subscription Share of such Subscriber after such remarketing efforts, then Participant, pursuant to its obligations under this Agreement, has an obligation to purchase additional Product to make up for any such purchase shortfalls by the defaulting Subscriber. Upon thirty (30) days written notice from AEPCO, Participant (along with each other Subscriber pursuant to the terms of their power purchase and energy storage agreements with AEPCO), shall increase its Subscription Share in the applicable Product, if any, to an amount equal to its then-current Subscription Share multiplied by the capacity of the defaulting Subscriber's subscription share (less any amount that has been successfully remarketed), such that Participant's new Subscription Share, together with the subscription shares of all non-defaulting Subscribers, shall equal 100% ("**Revised Subscription Share**"). AEPCO shall provide in the notice the increased amount of applicable Product that Participant and each Subscriber shall purchase due to the Subscriber Event of Default, and Participant shall purchase and pay for its increased allocation in accordance with the terms of this Agreement without the need for further action on behalf of AEPCO or Participant. For all purposes of this Agreement, the Participant's Subscription Share shall thereafter equal the Revised Subscription Share.

6.6 Subscriber Defaults. If an Event of Default has occurred with respect to a Subscriber under such Subscriber's power purchase and energy storage agreement with AEPCO

related to the Project, AEPCO shall use commercially reasonable efforts to recover damages from the defaulting Subscriber on behalf of the non-defaulting Subscribers and Participant. For the avoidance of doubt, all damages recovered from the defaulting Subscriber, less any costs AEPCO reasonably incurs to collect such damages, shall be credited to the non-defaulting Subscribers and Participant based on Subscription Shares.

ARTICLE VII. FORCE MAJEURE

- 7.1 General.** To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “**Claiming Party**”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. Except as otherwise provided herein, all of the provisions of this Agreement shall remain in full force and effect during Force Majeure.

The Parties agree that for purposes of this Agreement, the obligation of Participant to make payments when due under this Agreement shall not be excused by any claim of Force Majeure, subject to AEPCO’s obligation to use commercially reasonable efforts to minimize Participant’s payment obligation, including AEPCO’s efforts to remarket the Product that maximizes the net economic value of the Product.

7.2 Additional Effects of Force Majeure.

- a) If a Force Majeure event is anticipated to prevent the Project from achieving Commercial Operation for a period of more than three hundred sixty-five (365) days, the Parties shall meet to determine the appropriate course of action. Either Party may terminate this Agreement, without liability to the other Party, for a Force Majeure event that prevents the Project from being placed into Commercial Operation later than three hundred sixty-five (365) days after the Expected Commercial Operation Date.
- b) If an event or events of Force Majeure prevents a Claiming Party from substantially performing its obligations under this Agreement for a consecutive period exceeding three hundred ninety-five (395) days (despite the Claiming Party’s diligent efforts to remedy its inability to perform), then the other Party may terminate this Agreement by giving ten (10) days prior notice to the affected Party.
- c) Upon termination pursuant to this Section 7.2, neither Party will have any liability to the other Party with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

ARTICLE VIII. INDEMNIFICATION

8.1 Indemnification. To the fullest extent permitted by Arizona law, each Party (“**Indemnifying Party**”) agrees to indemnify, defend, and hold the other Party and its Representatives and Affiliates (each, an “**Indemnified Party**”) harmless, from and against any and all claims, actions, costs (including reasonable attorneys’ fees), expenses, damages, and liabilities, arising out of or in connection with the Indemnifying Party’s or its Representatives’ respective activities to the extent that they are caused by the Indemnifying Party’s (a) material breach of any obligation, representation, or warranty created by this Agreement; or (b) negligent or willful acts or omissions in the conduct and performance under this Agreement including, but not limited to, liabilities attributable to breach of law or violation of Approvals and Permits applicable to the Premises and/or the Project, as the case may be. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, an Indemnifying Party is excused from any indemnity obligation to each Indemnified Party and is not required to reimburse or indemnify any Indemnified Party for any claim to the extent such claim is due to the negligence or willful misconduct of the Indemnified Party.

- a) The Indemnified Party shall promptly notify the Indemnifying Party of any notice of a claim received that may result in a claim against the Indemnified Party along with a copy of any documents received. The Indemnifying Party may assume the defense of any claim, at its sole cost and expense, with counsel designated by the Indemnifying Party. The Indemnified Party will cooperate and consult with the Indemnifying Party in responding to and defending any such claim. If the potential Indemnifying Party does not assume the defense of the claim by providing notice to the Indemnified Party within thirty (30) days after notice of a claim is received, the Indemnified Party may provide notice to the Indemnifying Party of its intent to assume the defense of the claim. If the Indemnifying Party does not assume the defense within seven (7) days of such notice, the Indemnified Party may assume the defense of the claim at the sole cost and expense of the Indemnifying Party. Neither Party shall settle any claim covered by this Section 8.1 without prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- b) The duty to indemnify will continue in full force and effect notwithstanding the expiration or termination of this Agreement.

8.2 Insurance. Throughout the Term, AEPCO shall maintain the types and amounts of insurance coverage as would be maintained in accordance with Prudent Utility Practice.

ARTICLE IX. CREDITWORTHINESS

- 9.1 **Financial Information.** AEPCO may require and Participant shall make available financial information reasonably needed to ascertain Participant’s ability to perform under this Agreement or to meet any other obligation which may accrue, including without limitation the obligation to pay damages in the event of failure to perform.
- 9.2 **Credit Support.** No later than the Commercial Operation Date, Participant shall fund and AEPCO shall maintain a working capital fund equal to three (3) months’ estimated charges under Sections 4.1, 4.2, and 4.3. All such estimates shall be prepared by AEPCO on the basis of the sum of the following: (i) the average of monthly estimated charges across the

next twelve (12) months, assuming full dispatch of Solar Output for all reasonable solar production hours during each month of the year, multiplied by three (3), and (ii) the monthly estimated charge of Participant's Subscription Share of the Storage Product, multiplied by three (3). Estimates shall be reviewed annually. The working capital fund shall be available to AEPCO to make timely payments of monthly invoices to Service Provider prior to receipt of payments from Participant of Participant's invoices from AEPCO for its Subscription Share and to pay for losses as a result of an Event of Default, as provided in Section 6.5. Following any such drawdown of the working capital fund, the fund shall be replenished no later than the fifth (5th) Business Day of the following month. AEPCO shall provide the initial working capital fund requirement no later than ninety (90) calendar days before the Commercial Operation Date. Should the required working capital fund requirement increase upon annual review, each Party shall have sixty (60) calendar days after AEPCO provides notice to increase or decrease the account balance to the required level. Upon termination of this Agreement, AEPCO will refund the any unused amounts in the working capital fund to Participant.

9.3 Letter of Credit.

- a) Notwithstanding anything contained in this Section 9.3 to the contrary, as an alternative to cash, Participant may fund its required contribution to the working capital fund in the form of a letter of credit in an amount up to the working capital requirement calculated in Section 9.2, that AEPCO may utilize to make payments to Service Provider if Participant fails to make timely payment to AEPCO, up to the amount Participant fails to pay, and to pay for losses as a result of an Event of Default, as provided in Section 6.5. Any letter of credit provided by Participant hereunder shall be an irrevocable, nontransferable standby letter of credit issued by (1) the National Rural Utilities Cooperative Finance Corporation, or (2) a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having (A) a Credit Rating of at least "A-" from S&P and "A3" from Moody's, and (B) total assets (determined in accordance with GAAP) of at least \$10,000,000,000 (Ten Billion Dollars), substantially in the form of Exhibit E and reasonably acceptable to AEPCO. All letter of credit costs shall be borne by Participant.
- b) Participant funding its required contribution to the working capital fund in the form of a letter of credit shall: (A) take all actions necessary to ensure that the issuing bank permits automatic renewal as provided in the relevant letter of credit, and (B) if the issuing bank has indicated its intent not to renew such letter of credit, provide a substitute letter of credit acceptable to AEPCO that complies with the requirements of this Section 9.3(ii) (or cash) at least twenty (20) Business Days prior to the expiration of the outstanding letter of credit
- c) Upon the occurrence of a letter of credit default with respect to a letter of credit provided by Participant under this Section 9.3, Participant shall provide a substitute letter of credit acceptable to AEPCO that complies with the requirements of this Section 9.3 (or cash) within five (5) Business Days after such occurrence.
- d) Failure of Participant to provide a substitute letter of credit (or cash) as required under this Section 9.3 shall be considered an Event of Default for purposes of Section 6.1.

9.4 Credit Support of Service Provider Agreement. Participant shall not, except as required by Section 9.2 and 9.3, be responsible for funding any holding account, letter of credit or other expense associated with AEPCO's obligation to the Service Provider to maintain AEPCO's creditworthiness requirements of the Service Provider Agreement.

ARTICLE X. MISCELLANEOUS

10.1 Assignment. Except as otherwise provided herein, neither Party may assign its rights and obligations under this Agreement without prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, conditioned, or delayed, provided that a Party may assign this Agreement to an Affiliate or to a successor with prior notice, but without consent of the other Party.

10.2 Permitted Encumbrances.

- a) AEPCO may from time to time, with notice to but without consent of the Participant, mortgage, pledge, encumber, or collaterally assign AEPCO's interest in this Agreement (an "**AEPCO Permitted Mortgage**") in favor of a lender or its designee ("**AEPCO Permitted Mortgagee**"). Upon request by AEPCO, from time to time, Participant will provide written confirmation of this Agreement, including reasonably requested factual confirmations. Subject to the terms of this Agreement, Participant will permit the AEPCO Permitted Mortgagee to cure or correct any omission or violation of this Agreement by AEPCO or on behalf of AEPCO. Any foreclosure of an AEPCO Permitted Mortgage or transfer in lieu thereof shall be deemed a permitted assignment.
- b) Participant may mortgage, pledge, encumber, or collaterally assign Participant's interest in this Agreement in favor of a lender or its designee.

10.3 Taxes. Participant shall be responsible for its Subscription Share of any and all Taxes assessed on the generation, sale, delivery or consumption of Solar Output produced by the Generation Facility or the interconnection of the Generation Facility to the electric distribution system, or on the generation, sale, delivery or consumption of the Storage Product or the interconnection of the BESS to the electric distribution system.

10.4 Governing Law and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona, without giving effect to its conflicts of law principles. The proper venue for any proceeding at law or in equity shall be Maricopa County, Arizona, and the Parties waive any right to object to the venue.

10.5 Waiver of Trial by Jury. Any suit, action or proceeding, whether claim, counterclaim or cross claim, brought or instituted by any Party against another Party hereto on or with respect to this Agreement or any event, transaction or occurrence arising out of or in any way connected with this Agreement shall be tried only by a court and not by a jury. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY**

JURY WOULD OTHERWISE ACCRUE. A PARTY MAY FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF A PARTY'S WAIVER OF RIGHT TO TRIAL BY JURY.

- 10.6 Dispute Resolution.** Any disagreement between Parties related to the Generation Facility or this Agreement shall be deemed a “**Dispute**”. Any Party with a Dispute shall notify the O&C Committee and the other Party in writing of the issue that the alleging Party believes is taking place and that a Dispute exists. Upon receipt of a notice of a Dispute, the chair of the O&C Committee shall refer the Dispute to the Parties involved, who shall in good faith seek to resolve the Dispute arising hereunder through negotiation. For disputes that cannot be resolved by the Parties involved within sixty (60) days, such Parties may pursue any remedy available at law or in equity. This provision does not apply to circumstances necessitating emergency injunctive relief, in which event the timeframes in this Section 10.6 will not apply.
- 10.7 Successors and Assigns.** Subject to the provisions of Section 10.1 above, this Agreement and the requirements and conditions herein contained shall inure to the benefit of and be binding upon successors, legal representatives and permitted assigns of the Parties.
- 10.8 Severability.** In case any one or more of the provisions contained herein shall for any reason be held to be wholly or partially illegal, invalid, or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid, or unenforceable provisions had not been contained herein. Furthermore, in lieu of any illegal, invalid or unenforceable provision in the Agreement, there shall be automatically added to this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- 10.9 Compliance with Laws.** Both Parties agree to comply and exercise reasonable diligence to require all others engaged by it to comply with all applicable laws, permits, decrees, orders, judgments, rules and regulations.
- 10.10 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the matters addressed herein.
- 10.11 Not to be Construed Against Drafter.** Each Party has had an adequate opportunity to review each and every provision of this Agreement and to submit the same to legal counsel for review and advice. Based on the foregoing, the rule of construction, if any, that a contract be construed against the drafter shall not apply to interpretation or construction of this Agreement.
- 10.12 No Personal Liability.** Except as otherwise expressly provided in this Agreement, no Representative of either Party, or Representative of an Affiliate or assignee of either Party, shall have any liability to the other Party in connection with this Agreement.
- 10.13 Time of Essence.** Time is of the essence of this Agreement and each and all of its provisions.

10.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.15 Survival. All provisions of this Agreement which by their express terms survive termination of this Agreement or expiration of the Term or which by the operation of their terms are intended to be performed, in whole or in part, after termination of this Agreement or expiration of the Term, and all obligations of indemnification contained in this Agreement shall survive any termination of this Agreement or the expiration of the Term, as applicable.

10.16 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement or the Service Provider Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any: (1) applicable law; (2) regulation; (3) rule adopted by an exchange, reliability coordinator, resource adequacy administrator, balancing area authority, control area, independent system operator, or any similar entity; or (4) in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use commercially reasonable efforts to prevent or limit the disclosure. In the event any Party receives a request to disclose the terms or conditions of this Agreement, or a copy of the Agreement itself, to a third party, the Party in receipt of a request for disclosure shall notify the other Party as promptly as possible, but in no event more than two (2) business days after receipt of such request, or, if earlier, before the deadline for disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation, and the Parties shall cooperate with efforts of any other party to limit or prevent disclosure of this Agreement or its terms and conditions.

The Parties acknowledge and agree that: (a) Participant is a political subdivision of the State of Arizona and, as such, may be subject to Arizona law related to open meetings, public records (including A.R.S. § 39-101, et seq.), and record retention; (b) Participant is governed by a board of directors and is required by law to conduct meetings of the board that are open to the public; and (c) most documents and electronic information provided to Participant will be considered public records and must be made available to members of the public upon request. As such, provided the receiving Party complies with any applicable procedural requirements set forth in this section, a receiving Party may disclose information identified as confidential by this Agreement to the extent necessary to comply with such laws.

Notwithstanding the foregoing, in the event that any demand or request for disclosure of the terms or conditions of this Agreement is made to Participant, Participant shall as soon as practicable notify AEPCO of the existence of such request or demand and shall (A) provide AEPCO with a reasonable opportunity to seek an appropriate protective order or other remedy, which both Parties will cooperate in seeking to obtain, and (B) Participant and AEPCO shall use reasonable efforts to seek redaction of any commercially sensitive information in this Agreement. In the event that such appropriate protective order or other

remedy is not obtained, Participant shall disclose that portion of the Agreement that is legally required to be disclosed.

- 10.17 Third Party Beneficiary.** Unless expressly provided in this Agreement, nothing herein is intended or shall be construed to confer any benefit upon a third party.
- 10.18 Waiver and Amendment.** Any waiver or amendment of this Agreement must be in writing and executed by both Parties. A waiver or failure to enforce any terms of this Agreement shall not affect or waive a Party's right to enforce any other term of this Agreement.
- 10.19 No Joint Venture.** Nothing contained herein shall be construed as creating any joint venture, partnership, or agency, or as making any Party the fiduciary of any other.
- 10.20 Exhibits.** The exhibits to this Agreement, as they may be amended or revised from time to time by mutual agreement of the Parties, are attached and incorporated by this reference.
- 10.21 Enforcement of Rights on Behalf of Participant.** AEPCO shall make commercially reasonable efforts to enforce all rights within the Service Provider Agreement that are inure to the benefit of Participant including, but not limited to the reliable delivery of solar energy, battery storage capacity and Environmental Attributes from the Project, and damages owed to Participant for Service Provider's failure to provide any of those benefits.
- 10.22 Notice from Service Provider.** Except for instances of confidential information, any material notice that is provided from Service Provider to AEPCO shall also be provided from AEPCO to Participant.
- 10.23 Registration of Environmental Attributes.** Per Section 4.2(c) of the Service Provider Agreement, AEPCO and Service Provider shall register the Project in WREGIS, or its successor, by the Commercial Operation Date. After successful transfer of Renewable Energy Credits from Service Provider to AEPCO, AEPCO shall transfer all Renewable Energy Credits produced by the Project in proportion to the Solar Output to Participant's WREGIS account on no less than an annual basis. Participant shall not be responsible for any expenses involved in the creation or transfer of RECs other than Participant's own cost to register itself with WREGIS.
- 10.24 Arizona Provisions.** Notice is hereby provided of Arizona Revised Statutes Sections 38-511, 23-214, 35-393,01, 35-394, 41-4401, and 42-17106 to the extent such provisions are applicable to contracts of the nature of this Agreement.
- 10.25 Participant Payment Limitation.** Notwithstanding any other provision of this Agreement, no part of the amounts payable by Participant pursuant to this Agreement shall be payable out of any ad valorem taxes imposed by Participant or from bonds or other obligations, the payment of which Participant's general taxing authority is pledged, unless (i) the same shall have been duly budgeted by Participant according to law, (ii) such payment or payments shall be within the budget limitations of the statutes of the State of Arizona, and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State of Arizona. Participant's payment of any amounts due under this Agreement, including amounts due after default or termination

hereof, shall in no circumstances constitute a general obligation of, or a pledge of the full faith and credit of, Participant, the State of Arizona, or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any ad valorem taxes. In no way does this Agreement create any constraint, obligation or limitation of Participant to transfer certain electric utility system revenues from the electric utility system to the general fund of the Participant. This Agreement is an agreement by Participant to purchase the Product, and Participant's payments made hereunder shall be designated by Participant as operating expenses of Participant in a manner similar to payments made by Participant pursuant to other agreements of Participant to purchase electric utility system inputs and supplies. This Agreement is not a debt, financial obligation, parity obligation, or subordinate obligation for any purpose of Participant's resolutions, ordinances, agreements or instruments pertaining to Participant's currently outstanding and future bonds and obligations paid in whole or in part from revenues of the electric utility system. No lien on the revenues of Participant's electric system is created by this Agreement. Any ability of Participant to pay such amounts demanded by AEPCO is subject to applicable law.

ARTICLE XI. NOTICES

Whenever AEPCO or Participant shall make any demand or serve any notice, consent, approval, authorization or other communication which is under the terms of this Agreement upon the other Party, the same shall be in writing and shall be deemed given and received upon receipt confirmed in writing (which may be by recipient or a third party delivery service) or, if earlier, three (3) business days following electronic mail transmission, receipt confirmed in writing or via "read receipt" or deposit in a regularly maintained receptacle for the United States mail, registered or certified mail, return receipt requested, postage prepaid, addressed to the intended recipient as follows:

If to AEPCO:

Arizona Electric Power Cooperative, Inc.
Attention: General Counsel
PO Box 670, 1000 S. Highway 80
Benson, AZ 85602
Email: legal@azgt.coop

If to Participant:

Energy Resources Director

Either Party may, at any time and from time to time, change the address to which notices are to be sent to such Party by delivering at least ten (10) days' prior written notice of such change to the other Party. Each Party, as a courtesy to the other Party, shall provide any notice described herein by electronic mail to the electronic mailboxes identified above as well.

[SIGNATURE BLOCKS ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Pinal Power Purchase and Energy Storage Agreement.

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

By: _____
Name: Patrick F. Ledger
Title: Executive VP and CEO

CITY OF MESA, ARIZONA

By: _____
Name: _____
Title: _____

EXHIBIT A - DESCRIPTION OF PROJECT

1. Project: Pinal Solar and Storage
2. Location: Pinal County, Arizona
3. Owner: Eloy Valley Energy Center III, LLC
4. Operator: NextEra Energy Resources, LLC or its designee
5. Scheduling Coordinator: Arizona Electric Power Cooperative, Inc.
6. Generating Facility:
 - a. Type of facility and conversion equipment: Solar Photovoltaic
 - b. Total nameplate capacity (MW_{AC}): 400
 - c. Total co-located capacity at Delivery Point: 462.5
 - d. Additional technology-specific information: Single axis trackers
7. Battery Energy Storage System:
 - a. Type of facility and conversion equipment: Energy Storage
 - b. Total nameplate capacity (MW_{AC}): 400
 - c. Total capacity at Point of Delivery: 462.5
 - d. Additional technology-specific information: AC-connected battery energy storage system
8. Transmission Provider: Western Area Power Administration
9. Other: Any wheeling costs after the Delivery Point to move the power to the load will be the responsibility of the individual Participants.

EXHIBIT B – DELIVERY POINT

Delivery Point: Western Administration Power Authority ED5 Substation

Any other delivery and/or receipt point, or other type of arrangement, as mutually agreed to in writing by AEPCO, the Participant, and third-party transmission provider(s), if any.

EXHIBIT C – RATES FOR SERVICE

¹ Solar Output Rate:

² Owner Solar Output Price/MWh	³ A&G and Margin /MWh	⁴ S&T Fee /MWh	Implementation Fee /MWh	Total /MWh
\$27.48	\$1.65	\$0.47	\$0.03	\$29.63

¹ Storage Product Rate:

² Owner BESS Rate/KW-month	³A&G and Margin /KW-month	S&T Fee/KW-month	Implementation Fee/ KW-month	⁵ Total /KW-month
\$10.98	\$0.66	N/A	\$0.01	\$11.65

¹ Rate is based on not qualifying for energy community and domestic content classifications under the Inflation Reduction Act of 2022 (IRA) and/or Empowering Rural America (New ERA) program benefits. For avoidance of doubt, the Parties agree to modify the rates if any of the anticipated program benefits are received from IRA or New ERA.

² Rate is subject to change under certain contractual conditions set forth in Service Provider Agreement, and for avoidance of doubt, such changes will be passed to Participants.

³A&G refers to administrative and general costs. Rate may be subject to change after a future ACC-approved rate case.

⁴ S&T Fee refers to scheduling and trading services and is subject to an annual budgetary rate process. S&T is applicable if not recovered under a separate energy and management services agreement or scheduling and trading agreement with AEPCO.

⁵ Total/KW-month rate does not include Charging Energy. Participant is responsible for transmission to import Charging Energy from sources other than the Generating Facility. Total/KW-month rate does not include Discharge Energy Delivery Charge. Participant is responsible for such charge as set forth in Exhibit D.

Above rates exclude cost of transmission service.

EXHIBIT D – DISCHARGE ENERGY DELIVERY CHARGE

1. This Exhibit D is effective under and as a part of Pinal Power Purchase and Energy Storage Agreement, hereinafter called Agreement, and shall remain in effect until superseded by another Exhibit D; provided this Exhibit D or any superseding Exhibit D shall terminate concurrently with the termination of the Agreement.
2. The Discharge Energy Delivery Charge will include the following charges as applicable to Participant:
 - a) Scheduling and Trading. If not charged under a separate agreement with AEPCO, a monthly cost to reflect the scheduling and trading services calculated on the total MWh of Discharge Energy multiplied by the AEPCO scheduling and trading rate, currently \$0.47 per MWh, subject to change year to year.

EXHIBIT E – FORM OF LETTER OF CREDIT

[Bank Letterhead]

Arizona Electric Power Cooperative, Inc.
P.O. Box 670
1000 S. Highway 80
Benson, Arizona 85602

Irrevocable Letter of Credit No. [_____]
Issuance Date: [____]
Amount: \$[____]
Expiration Date: [__]

We hereby issue in your favor this irrevocable Letter of Credit No. _____ (this “Letter of Credit”) in the aggregate stated amount of [\$____] for the account of [Name of Participant] (the “Company”) in relation to that certain Pinal Power Purchase and Energy Storage Agreement, dated as of _____ to which Company and Arizona Electric Power Cooperative, Inc (“AEPCO”) are party (as may have been amended, modified or supplemented from time to time to time, the “Agreement”).

This Letter of Credit is effective immediately and expires at our close of business on the expiration date shown above. Notwithstanding the foregoing, this Letter of Credit will automatically terminate upon its surrender to us for cancellation.

Funds under this Letter of Credit are available against your sight draft and demand made on us from time to time, such demand to be made by your submission of your statement, purportedly signed by your authorized officer as follows, with appropriate insertions: “_____ has failed to [describe default] its obligations under the Pinal Power Purchase and Energy Storage Agreement, dated as of _____, to which Company is a party and under which the undersigned is AEPCO, and as a result the undersigned is claiming the sum of \$_____ under [Bank Name] letter of credit number _____.”

Any such presentation shall be made at our [Bank Address]. If we receive your demand certificate on or prior to the expiration or termination of this Letter of Credit, then we will honor your demand in accordance with your payment instructions, *provided*, that such documents are presented in strict compliance with the terms and conditions of this Letter of Credit.

To the extent not contrary to the express provisions hereof, this Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credit (2007 Revision), International Chamber of Commerce Publication No. 600 (the “UCP”). As to matters not addressed by the UCP, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without reference to the conflict of law provisions thereof that would direct the application of the laws of another jurisdiction.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at [Bank Address], specifically referring to this Letter of Credit Number _____.

This Letter of Credit sets forth in full our undertaking. Except as stated herein, payment of demands made under this Letter of Credit is not subject to any condition or qualification. Our obligations hereunder are primary obligations that shall not be affected by the performance or nonperformance by any party to the Agreement of any obligations under the Agreement or under any agreement between such a party and any other person. Our obligations and liabilities hereunder shall not in any way be affected, modified, amended, reduced, impaired, amplified or limited by any amendment, renewal, extension, modification, compromise, release, discharge or reference of, under, to or in connection with the Agreement or any other document or agreement (except only the certificate referred to herein). Reference herein to the Agreement shall not be deemed to incorporate the same herein by reference.

Very truly yours, [*Bank Name*]

Authorized Signatory

EXHIBIT F – PARTICIPANT’S AGENT

1. This Exhibit is only applicable if the Participant designates, in writing, a Participant’s Agent to act on the Participant’s behalf within a defined scope of authority.
2. Participant represents and warrants to AEPCO that:
 - a) Pursuant to the terms and conditions of that certain Resource Management Services agreement (Contract No. 97-DSR-10820) between Participant and Western Area Power Administration ("WAPA") (the "RMS Agreement"), Participant has designated WAPA ("Agent" or "Participant’s Agent") as its Agent to act for and bind the Participant in connection with the scheduling of Transactions entered into by Participant with AEPCO under this Agreement. Additionally, Agent shall have the authority to perform any and all duties incident to or necessary for the scheduling of electricity hereunder.
 - b) The RMS Agreement has been duly authorized and executed, is in full force and effect, and constitutes the legal, valid and binding obligation of Participant.
 - c) Participant will be fully bound to perform the obligations incurred, on its behalf by the Agent, under this Agreement.
 - d) Participant shall indemnify AEPCO, its affiliates and its respective officers, directors, employees and agents and hold them harmless from and against all losses, costs, liabilities, damages and expenses (including, without limitation, costs of suit and reasonable attorney's fees) which arise out of this Agreement, and which may be incurred by AEPCO as a result of Agent's acting as Participant 's Agent as provided herein.
 - e) Participant may terminate the original Agent's authority and designate a new Agent from time to time by giving written notice of same to AEPCO at least thirty (30) days prior to the effective date of such new designation, and in that event the original Agent's authority to act as Agent for Participant shall cease with respect to documents executed after the effective date set forth in such notice and the newly designated agent shall be substituted therefor, provided, however, that the designation of a new Agent shall not impair or affect scheduling instructions by the original Agent prior to the effective date of the designation of the new Agent. Participant agrees that AEPCO may rely upon documents, including online scheduling entries in OASIS or other such systems executed by a representative of the Agent, without AEPCO inquiring as to the authority of any such representative.

EXHIBIT G – SUBSCRIPTION SHARES

Member	Solar Facility Contract Capacity	Solar Facility Contract Capacity Percentage	ESS Contract Capacity	ESS Contract Capacity Percentage
GCEC	6.0	1.50%	6.0	1.50%
SSVEC	20.0	5.00%	20.0	5.00%
Trico	35.0	8.75%	35.0	8.74%
MEC	80.0	20.00%	55.0	13.74%
SPPA	104.0	26.00%	133.3	33.30%
VEA	20.0	5.00%	30.0	7.49%
APA	95.0	23.75%	86.0	21.48%
Mesa	25.0	6.25%	20.0	5.00%
Boulder	5.0	1.25%	5.0	1.25%
Columbus	10.0	2.50%	-	0.00%
Reserved	0.0	0.00%	9.7	2.50%
Total	400.0	100.00%	400.0	100.00%

AEPCO Class A Member Participant’s in the Project to include but limited to GCEC, SSVEC, Trico, and MEC will execute amendments to their wholesale power agreements to reflect that their collective participation in the Project shall require that each of them will be obligated to increase their respective purchases of the Product sold to Participant by an amount necessary to ensure that, in the event of a Class A Member Participant default, the entire amount of Class A Member Participant’s Subscription Share remains committed by the remaining Class A Member Participants for the Term of this Agreement.