



A UniSource Energy Company

## Up-Front Incentive Renewable Energy Credit Purchase Agreement (Commercial Grid-Tied Solar Electric Project 50 kW AC or Smaller)

This Up Front Incentive Renewable Energy Credit Purchase Agreement ("**Agreement**") is hereby made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ ("**Effective Date**"), by and between Tucson Electric Power Company, an Arizona corporation ("**Company**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Customer**"). Company and Customer may be referred to individually herein as a "**Party**" or collectively as the "**Parties**."

### RECITALS

A. Company desires to increase the number of renewable electricity generation facilities and the consumption of renewable electricity within its service territory, while concurrently reducing the cost of renewable electricity generation systems for its customers;

B. Customer intends to install, maintain and own a renewable electricity generation facility and have title to the RECs (as defined below) associated with such facility;

C. Company is subject to certain state regulatory requirements governing its use of renewable resources to supply energy to its customers, including those provided under the Renewable Energy Standard and Tariff (as defined below);

D. To further Company's continuing commitment to develop and encourage the use of renewable energy resources and to better ensure compliance with regulatory requirements, Company has implemented a REC purchase program to provide financial incentives to its customers to install renewable generating equipment; and

E. Customer desires to participate in the Company's REC purchase program and Company desires for Customer to participate in the program under the terms and conditions contained in this Agreement.

### AGREEMENT

#### 1. DEFINITIONS

1.1. "Acceptance Test" means an inspection performed by Company to verify the Customer System has been installed and operates in conformance with Customer's Program reservation and the System Qualifications.

- 1.2. "Customer System" means the \_\_\_\_\_ output (DC) photovoltaic renewable electricity generation facility located at the Premises.
- 1.3. "Installation Deadline" means the date that is one hundred eighty (180) days after the Reservation Confirmation Date.
- 1.4. "Premises" means Customer's facilities located at \_\_\_\_\_, Arizona.
- 1.5. "Proof of Project Advancement" means documentation submitted to Company demonstrating that the installation of the Customer System is progressing on schedule and is staged for completion on or before the Reservation Confirmation Date. Such documentation may include, without limitation, city/county permit applications, final inspection materials or other documentation evidencing project advancement as set forth in the Program or required by Company.
- 1.6. "Program" means the Tucson Electric Power Company Renewable Energy Credit Purchase Program Definition 2010-2014, as may be amended from time to time.
- 1.7. "Reservation Confirmation Date" means the date Customer's Program reservation request is approved by Company under the Program.
- 1.8. "REC" means any and all environmental credits, attributes and benefits, including greenhouse gas or emissions reductions and any associated credits, environmental air quality credits, offsets, allowances and benefits howsoever entitled, actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury, and other emissions avoided, credits towards achieving local, national or international renewable portfolio standards, green tags, and any and all other green energy or other environmental benefits associated with the generation of renewable energy (regardless of how any present or future law or regulation attributes or allocates such characteristics), including those created under the REST.
- 1.9. "Renewable Energy Standard and Tariff" or "REST" means the Arizona Renewable Energy Standard and Tariff codified at A.A.C. R14-2-1801 *et. seq.*, as may be amended from time to time.
- 1.10. "System Qualifications" means all equipment, installation and other general requirements pertaining to commercial solar electric systems smaller than 50 kW as set forth in the Program.
- 1.11. "Term" shall have the meaning set forth in Section 14.1 below.
- 1.12. "Up Front Incentive" or "UFI" means a one-time incentive payment based on the Customer System capacity or estimated energy kilowatt-hour ("**kWh**") production, as applicable, rather than on measured system output.

## **2. PROGRAM TIMELINE**

Customer agrees to perform its obligations with respect to the Customer System hereunder in an expeditious manner, including, but not limited to, submitting Proof of Project Advancement to Company within sixty (60) days of the Reservation Confirmation Date, ensuring Company is provided with copies of the applicable city/county final inspection permit as soon as practicable after installation of the Customer System is complete, and meeting all Program requirements on or before the Installation Deadline. Failure to perform such obligations may result in cancellation of the Customer System Program reservation.

## **3. CUSTOMER RENEWABLE ENERGY SYSTEM**

Customer owns the Customer System and will be solely responsible for its cost, operation and maintenance. The Parties acknowledge and agree that, to qualify for participation in the Program, the Customer System must comply with all System Qualifications and Program requirements.

## **4. SYSTEM INSTALLATION**

The Customer System must have been installed at the Premises by a qualified installer in accordance with the installation requirements set forth in the System Qualifications and the Program, including without limitation, a proper interconnection with Company's power grid. Customer or its designee shall be solely responsible for the installation of the Customer System, including selecting a qualified installer and paying all installation costs and expenses.

## **5. SYSTEM INSPECTIONS**

Customer will notify Company when the installation of the Customer System is complete by providing Company with a copy of the applicable city/county final inspection permit associated with the installation. Following its receipt of such notice and permit, Company will perform an Acceptance Test on the Customer System to verify the installation and system performance are in compliance with the System Qualifications. If the Company determines the Customer System is not in compliance with the System Qualifications for any reason, Company will notify Customer of such noncompliance. Company will have no further obligation under this Agreement until all such deficiencies are remedied by Customer to Company's reasonable satisfaction and the Customer System is in compliance with the System Qualifications. Company shall have the right to conduct periodic inspections of the Customer System during the Term upon notice to Customer. Such inspections may include, without limitation, reading the Customer System's solar production meter as necessary to verify compliance with the System Qualifications. Customer shall provide Company with reasonable access to the Customer System to conduct any such inspection.

## **6. UP-FRONT INCENTIVE PAYMENT**

6.1. Conditions Precedent. Subject to: (i) Customer's execution and delivery of this Agreement and a properly completed Form W-9 to Company, (ii) Company's receipt of a copy of the applicable city/county final inspection permit, (iii) Company's determination that the Customer System is in compliance with the System Qualifications (including by passing any required Acceptance Test), and (iv) the Customer System being operational by the Installation Deadline, Company shall pay Customer the UFI described in this Section 6.

6.2. Customer System UFI. Company shall pay Customer a UFI for the Customer System in the amount of \$1.50 per DC Watt of installed on-grid solar generating capacity as determined by Company during the Customer System Acceptance Test, as prorated by any de-rating for off-angle and shading using the applicable chart in the Program.

6.3. Payments. Any UFI payment determined by Company to be owed to Customer hereunder shall be paid to Customer within thirty (30) days after the Customer System passes the Acceptance Test described under Section 5 above.

6.4 Payments Constitute Taxable Income. The IRS considers any UFI payment made to Customer to be taxable income to Customer, even if the payment is assigned to a third party. Accordingly, Customer shall deliver to Company a properly completed IRS Form W-9 prior to Company's execution of this Agreement to enable Company to issue an IRS-required Form 1099 for any UFI payment made to Customer.

## **7. OWNERSHIP OF RENEWABLE ENERGY CREDITS**

Customer hereby irrevocably and unconditionally assigns and transfers to Company any and all RECs derived from the installation and use of the Customer System during the Term. Customer shall not sell, trade, assign or otherwise transfer, or permit to be sold, traded, assigned or otherwise transferred, any RECs derived from the installation and use of the Customer System to any party other than Company during such time Company is entitled to receive such RECs hereunder. Upon Company's request, Customer shall provide Company with reasonable documentation evidencing its ownership of such RECs and transfer thereof to Company.

## **8. SYSTEM ELECTRICAL OUTPUT**

Customer hereby assigns to Company all of its rights to all electrical output of the Customer System. Company will thereafter return any and all such electric output to the Customer at no cost to Customer.

## **9. CUSTOMER SYSTEM REMOVAL**

Neither the Customer System nor any components thereof may be removed from the Premises during the Term without Company's prior written consent. Any such removal of the Customer System shall constitute a material breach of this Agreement and will subject the Customer to the UFI refund obligations set forth in Section 14.5 below.

## **10. CUSTOMER REPRESENTATIONS**

Customer hereby represents and warrants to Company that the following statements are true and correct as of the Effective Date and will be true and correct at the time of any transfer by Customer to Company of any RECs hereunder:

10.1. Customer is the true and lawful owner of, and has good title to, all RECs transferred from Customer to Company hereunder, free and clear of all liens and encumbrances;

10.2. Each REC transferred from Customer to Company hereunder meets the requirements of the REST;

10.3. Neither Customer nor, to Customer's knowledge, any third party has sold, traded, assigned or otherwise transferred any RECs to be transferred from Customer to Company hereunder to any party other than Company;

10.4. Customer has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including, without limitation, the transfer of any RECs to Company; and

10.5. Customer is in full compliance with all applicable federal, state and local laws, regulations, ordinances and codes governing the production and/or sale of electricity.

## **11. WARRANTY**

COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND HEREUNDER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ITS PERFORMANCE HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CUSTOMER SYSTEM, ITS OPERATION, SAFETY, INSTALLATION OR COMPLIANCE WITH ANY BUILDING OR SAFETY CODES, RULES OR REGULATIONS, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY HEREBY DISCLAIMS ANY AND ALL LIABILITY ASSOCIATED THEREWITH.

## **12. LIMITATION OF LIABILITY**

COMPANY'S ENTIRE LIABILITY ARISING OUT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES STEMMING FROM CLAIMS DIRECTLY ATTRIBUTABLE TO COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN NO EVENT SHALL COMPANY, ITS EMPLOYEES OR AGENTS BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGE, HOWEVER CAUSED, RESULTING FROM COMPANY'S PERFORMANCE HEREUNDER.

## **13. INDEMNIFICATION**

Customer agrees to indemnify, defend and hold harmless Company, its affiliates and parent company, and all their officers, directors, shareholders, employees and agents from and against any and all costs, claims, liability, judgments and expenses of any nature whatsoever, which arise from damage to property or from injury or death which occurs as a result of the purchase, installation or maintenance of the Customer System. Customer's obligation to indemnify hereunder shall survive termination of this Agreement.

## **14. TERM AND TERMINATION**

14.1. Term. This Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall continue until December 31 of the 20<sup>th</sup> full calendar year after the Customer System passes the Acceptance Test (the "**Term**").

14.2. Company Termination. Company may terminate this Agreement:

i. on thirty (30) days written notice to Customer in the event the Customer commits a material breach of this Agreement or the Program and fails to cure the same within such thirty (30) day period;

ii. immediately in the event that the Customer: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under the bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days after filing; or (c) otherwise becomes bankrupt or insolvent (however evidenced);

iii. upon (30) days prior written notice to Customer if the Customer System is not in compliance with the System Qualifications (including by passing the Acceptance Test) by the Installation Deadline and Company does not grant an extension; or

iv. immediately upon written notice to Customer in the event the Customer System Program reservation is cancelled by Company under the Program, including for a failure to meet any project advancement requirements under the Program.

14.3. Force Majeure. Either Party may terminate the Agreement as provided in Section 15.8 below.

14.4. Mutual Agreement. The Agreement may be terminated at any time by mutual written agreement of the Parties.

14.5. Effect of Termination. In the event of Company's termination of the Agreement for Customer's breach under Section 14.2(i) (including as a result of the removal of the Customer System from the Premises in violation of Section 9 above), Section 14.2(ii), 14.3, or if the Parties terminate the Agreement under Section 14.4 above, in addition to any other legal rights and remedies available to Company, Customer shall immediately refund to Company a pro-rata amount of the UFI paid to Customer hereunder corresponding to the number of months remaining in the Term. In the event of Company's termination of this Agreement under Section 14.2(iii) or 14.2(iv) above, neither Party shall have any further obligation to the other hereunder and neither Party shall have any liability to the other stemming from such termination.

## **15. MISCELLANEOUS**

15.1. Modification, Waiver and Severability. This Agreement may not be modified or supplemented except by written instrument signed by the Parties. No waiver of any default or breach hereof shall be deemed a waiver of any other default or breach hereof. If any part of this Agreement is declared void and/or unenforceable, such part shall be deemed severed from this Agreement which shall otherwise remain in full force and effect.

15.2. Assignment. This Agreement and the rights, duties, and obligations hereunder may not be assigned or delegated by the Customer without the prior written consent of Company.

15.3. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Arizona, without regard to the choice of law provisions thereof. Venue for any dispute arising hereunder shall be any court of competent jurisdiction located in Pima County, Arizona.

15.4. Entire Agreement. This Agreement is the final integration of the agreement between the Parties with respect to the matters covered by it and supersedes any prior understanding or agreements, oral or written, with respect thereto.

15.5. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

15.6. Titles and Captions. Titles or captions contained in this Agreement are inserted for convenience and for reference only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

15.7. Expenses and Attorney's Fees. In any actions between the Parties to enforce any of the terms of this Agreement, the prevailing Party shall be entitled to recover expenses, including reasonable attorney's fees.

15.8. Force Majeure. Neither Party shall be liable to the other for failure to perform its obligations hereunder to the extent such failure results from causes beyond its reasonable control, including strikes, climatic conditions, acts of God, governmental laws, regulations, orders or requirements, interruptions of power or unavailability of equipment or supplies (each a "**Force Majeure Event**"). Provided, if any Force Majeure Event claimed by a Party continues for an uninterrupted period of more than one hundred and eighty (180) days, then the other Party may, at any time following the end of such period, immediately terminate this Agreement upon written notice to the affected Party, without further obligation to the affected Party, except as to payment of any costs and liabilities incurred before the effective date of such termination.

15.9. Forward Contract. The Parties agree that this Agreement and the transactions contemplated hereunder shall constitute a "forward contract" and that the Parties are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

15.10. Customer Transfer of Rights. Subject to Section 15.2 above, if Customer assigns or otherwise transfers its rights to the RECs from the Customer System, Customer's successor-in-interest shall expressly assume all of Customer's obligations hereunder in writing, and this Agreement shall not be affected, nor shall Company's rights hereunder be disturbed in any way, including, without limitation, Company's continued right to all RECs assigned pursuant to Section 7 above. Customer shall provide Company with an executed assignment agreement in a form satisfactory to Company at the time of the transfer of the right to receive such RECs. Any failure to comply with this provision shall be considered a material breach of the Agreement.

15.11. Compliance with Law. Customer shall comply with all applicable federal, state and local laws, regulations, ordinances and codes at all times in performing under this Agreement.

15.12. Survival. After expiration or termination of this Agreement, those provisions which specifically provide for survival beyond expiration or termination, and all provisions regarding warranty and limitation of liability, shall survive indefinitely or until the expiration of the time period specified elsewhere in this Agreement with respect to the provision in question.

15.13. No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

15.14. Taxes. Customer shall pay all local, state and federal taxes, levies, duties and assessments of every nature whatsoever which may be imposed or due in connection with the RECs sold to Company hereunder. Customer shall hold Company harmless from any and all future liability on account of any and all such taxes, levies, duties, and assessments.

15.15. Notices. All notices under this Agreement shall be in writing and shall be given by personal service (including receipted confirmed facsimile), or by certified or registered mail, return receipt requested, or by recognized overnight courier service, to the Parties at the addresses set forth below. All notices shall be deemed given upon the actual receipt thereof.

**Company:** **Tucson Electric Power Company**  
PO Box 711  
Tucson, Arizona 85702  
Fax: (520) 918-8350  
Attn: Renewable Energy Department

**Customer:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**[signatures on following page]**



**ACCEPTED AND AGREED** as of the Effective Date.

**TUCSON ELECTRIC POWER COMPANY**

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

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

Title: \_\_\_\_\_

**CUSTOMER**

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

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

Title: \_\_\_\_\_