



2013 Up-Front Incentive Renewable Energy Credit Purchase Agreement (Leased Non-Residential Grid-Tied Solar PV)

This Up-Front Incentive Renewable Energy Credit Purchase Agreement (“**Agreement**”) is hereby made and entered into this ____ day of _____, 20____, (“**Effective Date**”) by and between UniSource Energy Services Company, an Arizona corporation (“**Company**”), _____ (“**Lessor**”), and _____ (“**Customer**”). Company, Lessor 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 energy within its service territory, while concurrently reducing the cost of such renewable systems for its customers;

B. Customer intends to lease a renewable electricity generation system from Lessor under a separate lease agreement hereto;

C. Lessor will own the system and have title to the RECs (as defined below) associated with such system;

D. 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);

E. 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

F. Customer and Lessor desire to participate in Company’s REC purchase program and Company desires for Customer and Lessor to participate in the program under the terms and conditions contained in this Agreement.

AGREEMENT

1. DEFINITIONS

- 1.1 "Acceptance Test" means an inspection and/or other verification performed by Company to confirm the Customer System has been installed and operates in conformance with the Program reservation for the Customer System 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 _____.
- 1.5 "Proof of Project Advancement" means documentation submitted to Company demonstrating that the installation of the Customer System is progressing on schedule, including, without limitation, building and/or construction permit applications and any other documentation evidencing project advancement as set forth in the Program or required by Company.
- 1.6 "Program" means the UniSource Energy Services 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 the Program reservation request for the Customer System 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 SO₂, NO_x, CO₂, 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 non-residential solar electric systems 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

Lessor 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

Lessor owns the Customer System and shall be solely responsible for the cost, operation and maintenance of the Customer System. 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 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. Lessor shall be solely responsible for the installation of the Customer System, including selecting a qualified installer and paying all installation costs and expenses.

5. ACCEPTANCE TEST AND INSPECTIONS

Lessor 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 inspection 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 Lessor of such noncompliance. Company will have no further obligation under this Agreement until all such deficiencies are remedied by Lessor to Company’s reasonable satisfaction and the Customer System is in compliance with the System Qualifications. Unless otherwise indicated in the Customer System reservation request, Company shall have the right to conduct periodic inspections of the Customer System during the Term upon notice to Customer and Lessor. Such inspections may include, without limitation, reading the Customer System’s solar production meter as necessary to verify compliance with the System Qualifications. Customer and Lessor 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 and Lessor’s execution and delivery of this Agreement and Lessor’s delivery of 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), (iv) submission of a Certificate of Completion to Company, and (v) the Customer System being operational by the Installation Deadline, Company shall pay Lessor the UFI described in this Section 6.

6.2 Customer System UFI. Subject to the 70 kW DC cap set forth in the Program, Company shall pay Lessor a UFI for the Customer System in the amount of \$0.10 per DC Watt of installed on-grid non-residential solar generating capacity, as determined by Company during the Customer System Acceptance Test, as prorated by any derating 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 Lessor hereunder shall be paid to Lessor 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 Lessor to be taxable income to Lessor. Accordingly, Lessor 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 Lessor.

7. OWNERSHIP OF RENEWABLE ENERGY CREDITS

Lessor 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. The Parties acknowledge and agree that Customer has no right, title or interest in or to any RECs resulting from the installation and use of the Customer System, whether under this Agreement or otherwise, and, accordingly Customer has no right to and will not attempt to sell, trade, assign or otherwise transfer, or permit to be sold, traded, assigned or otherwise transferred, any such RECs. Lessor 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, Lessor shall provide Company with reasonable documentation evidencing its ownership of such RECs and transfer thereof to Company.

8. SYSTEM ELECTRIC OUTPUT

The ownership of rights concerning the electrical output of the Customer System is addressed in a separate agreement hereto.

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 Lessor to the UFI refund obligations set forth in Section 14.5 below, including if Lessor has assigned the UFI payment to any third party.

10. CUSTOMER AND LESSOR REPRESENTATIONS

Each of Lessor and 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 Lessor to Company of any RECs hereunder:

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

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

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

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

10.5 Lessor and Customer are 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 LESSOR OR CUSTOMER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGE, HOWEVER CAUSED, RESULTING FROM COMPANY'S PERFORMANCE HEREUNDER.

13. INDEMNIFICATION

Lessor and Customer agree 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 lease, purchase, installation, use or maintenance of the Customer System. The 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 20th full calendar year after the Customer System passes the Acceptance Test (the "Term").

14.2 Termination. Company may terminate this Agreement:

- i. on thirty (30) days written notice to Lessor in the event Lessor or 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 upon written notice to Lessor in the event that Lessor: (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 has 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. unless otherwise agreed by Company and Lessor, upon written notice to Lessor upon the termination or expiration of Customer's lease with Lessor for the Customer System;
- iv. upon (30) days prior written notice to Lessor 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
- v. immediately upon written notice to Lessor 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 Company or Lessor 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 Company and Lessor.

14.5 Effect of Termination. In the event of Company's termination of the Agreement for Lessor or 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), 14.2(iii), or 14.3 above, or if the Parties terminate the Agreement under Section 14.4 above, in addition to any other legal rights and remedies available to Company, Lessor shall immediately refund to Company a pro-rata amount of the UFI paid to Lessor 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(iv)

or 14.2(v) above, no Party shall have any further obligation to any other Party hereunder and no Party shall have any liability to any 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 thereof. 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 Lessor 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 Mohave and Santa Cruz 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 action between the Parties to enforce any of the terms of this Agreement, the prevailing Party or Parties shall be entitled to recover expenses, including reasonable attorney's fees.

15.8 Force Majeure. No Party shall be liable to any other Party 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, or governmental laws, regulations, orders or requirements (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, terminate this Agreement immediately upon written notice to the affected Party or Parties, without further obligation to any Party, except as to payment of any costs and liabilities incurred before the effective date of such termination or otherwise expressly set forth herein.

15.9 Customer Sale of Premises. In the event Customer sells or otherwise transfers the Premises, Customer's successor-in-interest shall expressly assume all of

Customer's obligations hereunder in writing by executing an assignment and Assumption Agreement in the form of Attachment A attached hereto and incorporated herein (the "**Assignment Agreement**"), 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 hereunder. Customer shall provide Company with an executed Assignment Agreement at the time of the sale or transfer of the Premises. Any failure to comply with this provision shall be considered a material breach of the Agreement.

15.10 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.

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

15.12 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.

15.13 Taxes. Lessor 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. Lessor shall hold Company harmless from any and all future liability on account of any and all such taxes, levies, duties, and assessments.

15.14 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:

UniSource Energy Services Company

Attn: Renewable Energy Resources
PO Box 3099
Kingman, AZ 86402
Email: renewables@uesaz.com

Lessor:

Phone: _____
Email: _____

Customer:

Phone: _____
Email: _____

[signatures on following page]

ACCEPTED AND AGREED as of the Effective Date.

UNISOURCE ENERGY SERVICES COMPANY

By: _____

Print Name: _____

Title: _____

LESSOR

By: _____

Print Name: _____

CUSTOMER

By: _____

Print Name: _____

ATTACHMENT A
FORM OF
ASSIGNMENT AND ASSUMPTION AGREEMENT
(see attached)

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Assignment") dated as of _____ 20__ ("Effective Date"), is made between and among _____ ("Seller"), _____ ("Buyer") and UniSource Energy Services Company ("Company"). Seller, Buyer and Company may be referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

Seller is a party to an Up-Front Incentive Renewable Energy Credit Purchase Agreement with Company and _____ ("Lessor") dated _____, 20__ (the "REC Agreement"). The REC Agreement pertains to the Customer System (as defined in the REC Agreement) located at _____ (the "Premises") that the Seller intends to sell to the Buyer; and

The REC Agreement requires that any purchaser of the Premises assume Seller's obligations under the REC Agreement. Incident to the sale of the Premises by Seller to Buyer, the Parties desire to effect the required assumption by this Assignment.

NOW, THEREFORE, in consideration of these premises and of the mutual promises herein contained, the Parties hereby agree as follows:

AGREEMENT

1. **ASSIGNMENT.** Incident to the sale of the Premises, Seller hereby assigns and transfers to Buyer the REC Agreement and all of Seller's right, interest, obligations and liabilities thereunder, effective upon the sale of the Premises. Buyer hereby accepts the assignment of the REC Agreement from Seller, and assumes all of Seller's obligations and liabilities thereunder, effective upon the sale of the Premises. Company and Lessor hereby consent to such assignment and assumption of the REC Agreement. The Assignment does not affect the REC Agreement or Company's rights thereunder, including, without limitation, Company's continued right to any credits assigned thereunder.

2. **MISCELLANEOUS.** This Assignment may not be modified or supplemented except by written instrument signed by the Parties. This Assignment and the rights, duties, and obligations hereunder may not be assigned or delegated by Buyer or Seller without the prior written consent of the Company. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

ACCEPTED AND AGREED as of the Effective Date.

BUYER

SELLER

By: _____
Name: _____

By: _____
Name: _____

UNISOURCE ENERGY SERVICES COMPANY

LESSOR

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____