SpencerFane®

Kari Olson
Direct Dial: 505-986-2686
kaolson@spencerfane.com

April 20, 2026

Via PRCe360 e-Filing and Case Management System

Ms. Melanie Sandoval
Bureau Chief of Records Management
New Mexico Public Regulation Commission
P.O. Box 1269
Santa Fe, NM 87504-1269

Re: In the Matter of the Application of El Paso Electric Company for Approval to Implement a Demand Response and Distributed Energy Resource Pilot Project

Dear Ms. Sandoval:

El Paso Electric Company ("EPE") hereby files for Commission approval to implement a demand response and distributed energy resource pilot project and reasonable costs associated with the pilot project.

This filing includes the direct testimony of an EPE witness and contains the following components:

- Application
- Proposed Form of Notice
- Direct Testimony and Exhibits of David C. Hawkins

This Application will be emailed to the parties in EPE's Integrated Resource Plan Proceeding, Docket No. 24-00260-UT, the Attorney General, and in EPE's most recent general rate case in Docket No. 25-00082-UT.

This Application is being filed electronically and a check in the amount of $25.00 for the Application will be mailed to the Commission. A copy of the check will be emailed to NMPRC Records separately.

Thank you for your assistance in this matter.

Very truly yours,

<u>/s/Kari E. Olson</u>
Kari Olson

KEO/CM
Enclosures

Cc: Counsel of Record and pro-se participants in Case No. 24-00260-UT

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT	)	
	)	**Case No. 26-00_____**
EL PASO ELECTRIC COMPANY, Applicant.	)	

EL PASO ELECTRIC COMPANY'S APPLICATION FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT

El Paso Electric Company ("EPE"), pursuant to NMSA 1978, Section 62-8-13 authorizing Applications for Grid Modernization Projects ("Grid Modernization Statute"), and the New Mexico Public Regulation Commission's ("NMPRC" or "Commission") Order Accepting Integrated Resource Plan in Case No. 24-00260-UT,[1] hereby files its Application For Approval to Implement a Demand Response and Distributed Energy Resource ("DR DER") Pilot Project ("Pilot Project") ("Application").

EPE is requesting all necessary regulatory approvals to implement such a project pursuant to the Grid Modernization Statute, which authorizes utilities to request approval for projects that incorporate technologies, equipment, or infrastructure associated with grid modernization, and which specifically includes technologies to enable demand response as eligible grid modernization improvements. Specifically, EPE requests the following authorizations:

1. Approval of the DR DER Pilot Project for up to 250 residential customers located in New Mexico;

[1] *In the Matter of El Paso Electric Company's Integrated Resource Plan Filing for the Period of 2025-2044 Pursuant to 17.7.3 NMAC*, Case No. 24-00260-UT, Order Accepting Integrated Resource Plan and Requiring Further Action by El Paso Electric Company, Ordering ¶ 32 (Dec. 19, 2025).

2. Approval of reasonable Pilot Project costs including: (a) $350,000 for the costs associated with equipment necessary to test the Pilot Project's dispatch methods as contemplated by Statement of Work 1, (b) a first-year cost of $1.64 million, assuming all 250 homes are completed at the start of the first year operational period, and escalating 2% thereafter. The nominal cost over the 30-year term of the agreement is $66.5 million, as contemplated by Statement of Work 2, and (c) $46,934 for E3's value stream analysis;

3. Authorization to defer approved Pilot Project costs for recovery in a future ratemaking proceeding; and

4. Any other approvals, authorizations, and actions that may be required under the Grid Modernization Statute, the Public Utility Act, or the Commission's Rules to implement the DR DER Pilot Project and to recover project costs.

EPE is requesting approval of its Application and, in support thereof, states:

1. EPE is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, is a public utility subject to the jurisdiction of the Commission under the New Mexico Public Utility Act, and is a wholly-owned subsidiary of Sun Jupiter, LLC

2. EPE generates, transmits, and distributes electricity through an interconnected system to customers in southern New Mexico and Texas. EPE owns, operates, leases, or controls the plant, property, and facilities used by it for the generation, transmission, distribution, sale, or furnishing of electricity to or for the public within New Mexico and Texas. EPE provides retail electric service to over 100,000 customers within its New Mexico service area.

3. EPE's principal business address and telephone number for its New Mexico service area are:

El Paso Electric Company
2820 Las Vegas Ct.
Las Cruces, NM 88007
(915) 543-5711

4. EPE's 2025 Integrated Resource Plan Action Plan, accepted by the Commission in Case No. 24-00260-UT, includes the action item to implement a pilot project for "demand response (DR) and distributed energy resources (DER) located on up to 250 customer residences no later than 90 days after Commission acceptance of EPE's 2025 IRP."[2]

5. The Grid Modernization Statute authorizes public utilities to file an application requesting approval of "rate designs or projects that incorporate the use of technologies, equipment, or infrastructure associated with grid modernization...".

6. Pursuant to the Grid Modernization Statute and the Commission's Final Order accepting EPE's Integrated Resource Plan in Docket No. 24-00260-UT, EPE's Application seeks approval to implement the proposed DR DER Pilot Project.

7. EPE's DR DER Pilot Project is detailed and supported in the pre-filed direct testimony and exhibits of David C. Hawkins, EPE Vice President of Operations Support.

8. EPE engaged E3 to perform a value stream analysis of the Pilot Project.

9. Pursuant to NMSA 1978, Section 62-8-13(C), EPE seeks to recover its reasonable Pilot Project costs through base rates in a future ratemaking proceeding.

10. Service of all notices, pleadings, and other documents related to this Application should be made as follows:

Nancy B. Burns	Kari E. Olson
Deputy General Counsel	Creighton R. McMurray
El Paso Electric Company	Spencer Fane, LLP

[2] Case No. 24-00260-UT, El Paso Electric Company's 2025 Integrated Resource Plan at pg. 186 (Sep. 2, 2025); EPE filed a Notice of Change to Anticipated Filing Date for Action Plan Item 5 on March 20, 2026, extending that deadline to April; 20, 2026.

300 Galisteo St., Ste 206	325 Paseo De Peralta
Santa Fe, New Mexico 87501	Santa Fe, New Mexico 87501
(505) 982-7391	(505) 982-3873

11. Electronic service should be made as follows:

EPE_Reg_Mgmt@epelectric.com;
kaolson@spencerfane.com;
cmcmurray@spencerfane.com;
nancy.burns@epelectric.com;

12. As indicated on the Certificate of Service attached hereto, EPE has emailed a copy of its Application and supporting Testimony and Exhibits to all persons on the Commission's Updated Official Service for EPE's IRP Proceeding, Docket No. 24-00260-UT, the Attorney General, and all counsel of record and pro se parties in EPE's last rate case, Docket No. 20-00104-UT.

13. A proposed form of Notice to Customers is attached to this Application as Exhibit A.

WHEREFORE, EPE respectfully requests that the Commission, after such notice and hearing as it deems necessary, issue a Final Order in this case that:

(1) Approves the proposed Pilot Project;

(2) Approves Pilot Project costs;

(3) Authorizes deferral of approved Pilot Project costs for recovery in a future ratemaking proceeding; and

(4) Grants such other approvals, authorizations, and relief as may be necessary or appropriate.

Respectfully submitted,

/s/ Nancy B. Burns

Nancy B. Burns
Deputy General Counsel
El Paso Electric Company
300 Galisteo Street, Ste. 206
Santa Fe, New Mexico 87501
Telephone (505) 470-9342
nancy.burns@epelectric.com

Kari E. Olson
Creighton R. McMurray
Spencer Fane, LLP
325 Paseo De Peralta
Santa Fe, New Mexico 87501
kaolson@spencerfane.com
cmcmurray@spencerfane.com

ATTORNEYS FOR EL PASO ELECTRIC COMPANY

EXHIBIT A

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT	)	**Case No. 26-00___**
EL PASO ELECTRIC COMPANY, Applicant	)	

EL PASO ELECTRIC COMPANY'S PROPOSED
NOTICE TO CUSTOMERS

The New Mexico Public Regulation Commission ("Commission" or "NMPRC") hereby gives notice of the following:

1. On April 20, 2026, El Paso Electric Company ("EPE" or "Company") filed its Application for Approval to Implement a Demand Response and Distributed Energy Resource Pilot Project ("DR DER" or "Pilot Project")("Application"), consistent with the Action Plan in EPE's 2025 Integrated Resource Plan ("2025 IRP"). The Application is accessible online on EPE's website, www.epelectric.com/company/public-notices, and at https://e360.prc.nm.gov/portal/public/#/public/nm-prc/en/home.

2. The Application is made pursuant to NMSA 1978, Section 62-8-13 governing Applications for Grid Modernization Projects, and the Commission Final Order in Docket No. 24-00260-UT accepting EPE's 2025 IRP.

3. EPE's Application asks the Commission to approve the following: (a) the proposed Pilot Project; (b) the proposed Pilot Project costs; (c) deferral of approved Pilot Project costs for recovery through base rates in a future ratemaking proceeding; and (d) any other approvals,

authorizations, and actions that may be required under the Grid Modernization Statute, the Public Utility Act, or Commission's Rules to implement EPE's Pilot Project.

4. Estimated program costs include: (a) $350,000 for the costs associated with equipment necessary to test the Pilot Project's dispatch methods as contemplated by Statement of Work 1, (b) a first-year cost of $1.64 million, assuming all 250 homes are completed at the start of the first year operational period, and escalating 2% thereafter. The nominal cost over the 30-year term of the agreement is $66.5 million, as contemplated by Statement of Work 2, and (c) $46,934 for E3's value stream analysis.

5. The Commission has assigned Case No. 26-00_______ to this Application, and all inquiries and correspondence concerning this matter should refer to that case number.

6. The Commission's Rules of Practice and Procedure, 1.2.2 NMAC, apply to this case except as modified by Order. A copy of 1.2.2 NMAC may be obtained online at https://www.srca.nm.gov/nmac-home/nmac-titles/title-1-general-government-administration/ or from the office of the Commission.

7. The Commission has set the schedule for hearing of this case as follows:

A. Deadline for motions to intervene to become a party to this case _____, 2026.

B. Deadline by which Commission Staff shall, and Intervenors may, file direct testimony regarding EPE's Application ______, 2026

C. Deadline to file Rebuttal Testimony, if any ______, 2026.

D. Public Evidentiary Hearing: ________, 2026 to ______, 2026.

PUBLIC HEARING

8. A public hearing will be held beginning at _______ a.m. on __________, 2026, and will continue through _______, 2026. The public hearing is where the Commission receives testimony, exhibits, and legal arguments about the Application. Members of the public can watch the hearing via a

livestream on the Commission's YouTube channel and its website, https://www.prc.nm.gov/public-hearings/. Please contact the Commission for confirmation of the hearing because hearings are occasionally canceled or rescheduled.

PUBLIC COMMENT

9. If you are interested in the case but do not wish to become a party, you may make oral and written comments as allowed by Rule 1.2.2.23(F) NMAC. The Commission will host a public comment session at which members of the public may make comments in person. The date, time, and place of the public comment session will be announced on the Commission's website.

10. Public comment can be provided at Commission open meetings. The open meetings schedule is available on the Commission website at www.prc.nm.gov/nmprc-open-meeting-agenda/.

11. Public comment will not be taken at the evidentiary hearing because comments are not evidence. You may send written comments before the Commission takes final action by sending the comment, which must specifically reference Case No. 26-00______, to prc.records@prc.nm.gov, or Commission Records Management Bureau, P.O. Box 1269, Santa Fe NM 87504. The Commission may be reached by telephone at 1-888-427-5772.

12. IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALFIED SIGN LANGUAGE INTERPRETER, OR ANY OTHER FORM OF AUXILIARY AID OR SERVICE TO ATTEND OR PARTICIPATE IN THE HEARING OR FOR A SUMMARY OR OTHER TYPE OF ACCESSIBLE FORMAT OF PUBLIC DOCUMENTS, PLEASE CONTACT THE DIRECTOR OF ADMINISTRATIVE SERVICES OF THE COMMISSION AT (505) 827-8019 AS SOON AS POSSIBLE PRIOR TO THE HEARING.

13. Anyone needing more information about this case may contact the Commission by phone at (505) 827-4084 or 1-888-427-5772 or by email at Ryan.Jimenez@prc.nm.gov.

I S S U E D at Santa Fe, New Mexico this ____ day of ______, 2026.

NEW MEXICO PUBLIC REGULATION COMMISSION

____

Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT	)	**Case No. 26-00___**
EL PASO ELECTRIC COMPANY, Applicant.	)	

DIRECT TESTIMONY OF

DAVID C. HAWKINS

ON BEHALF OF

EL PASO ELECTRIC COMPANY

April 20, 2026

EL PASO ELECTRIC COMPANY
DIRECT TESTIMONY OF
DAVID C. HAWKINS

TABLE OF CONTENTS

EXHIBITS

EL PASO ELECTRIC COMPANY
DIRECT TESTIMONY OF
DAVID C. HAWKINS

I. INTRODUCTION AND QUALIFICATIONS

Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is David C. Hawkins. My business address is 100 N. Stanton Street, El Paso, Texas 79901.

Q2. WHO IS YOUR CURRENT EMPLOYER AND WHAT POSITION DO YOU HOLD?

A. I am employed by El Paso Electric Company ("EPE" or the "Company") as Vice President of Operations Support.

Q3. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I hold a Master of Science degree and a Bachelor of Science degree in Electrical Engineering from New Mexico State University. I have been with EPE since 2002, where I have held various positions including Vice President of Generation, System Planning and Dispatch and Vice President of Power Marketing, Fuels and Resource Planning. Before joining EPE, I served as a Wholesale Power Marketing Analyst at Public Service Company of New Mexico ("PNM").

Q4. WHAT ARE YOUR RESPONSIBILITIES WITH EPE?

A. I am responsible for the oversight and direction of EPE's System Operations, Environmental, Energy Resources, and Support Services departments. These departments are responsible for grid reliability; fuel and energy needs for the system and required regulatory support; compliance with related North American Electricity Reliability Corporation ("NERC") standards; monitoring EPE's water and air emissions for regulatory compliance; fleet operations; security; and facilities operations. I oversaw System Planning and Interconnections, as well as Resource Strategy and Land Management through April 6, 2026.

Q5. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY IN REGULATORY PROCEEDINGS?

A. Yes. I have previously presented filed testimony with the Federal Energy Regulatory Commission and testified before the New Mexico Public Regulation Commission ("NMPRC" or "Commission"), and Public Utility Commission of Texas and Federal Energy Regulatory Commission.

II. PURPOSE OF DIRECT TESTIMONY

Q6. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. The purpose of my Direct Testimony is to present and support EPE's Application for Approval of a Demand Response and Distributed Energy Resource Pilot Project ("Application") for up to 250 residential customers located in New Mexico (the "Pilot Project" or "Pilot") filed pursuant to EPE's 2025 Integrated Resource Plan

("2025 IRP") accepted by the Commission in Docket No. 24-00260-UT and the New Mexico Grid Modernization Act, NMSA 1978, § 62-8-13.

This Pilot Project is the result of the Company's 2025 IRP process, a process characterized by extensive stakeholder consultation, and a rigorous evaluation of resource and non-wires alternatives. Through this collaborative framework, participants vetted various strategies to meet future energy and capacity needs reliably and cost-effectively. Consequently, the 250-home Pilot Project was formally integrated into the 2025 IRP Final Action Plan, and that action plan was subsequently accepted by the Commission.

I describe the Pilot Project, its role in advancing EPE's understanding of residential demand-side flexibility, and how the results of the Pilot Project will inform future resource planning decisions in New Mexico. The Pilot is intended to evaluate the operational performance, customer participation, and potential system benefits of a demand response and distributed energy resource as a complement to traditional supply-side resources, consistent with the Commission's 2025 IRP framework and EPE's long-term resource planning obligations.

Finally, I address compliance with statutory criteria for Commission consideration provided in the Grid Modernization Statute, NMSA 1978, Section 62-8-13 ("Grid Mod Statute") and support EPE's request to defer Commission-approved Pilot Project costs for recovery in EPE's next general rate case.

Q7. CAN YOU DESCRIBE THE PROPOSED PILOT PROJECT?

A. The scope of the proposed Pilot Project will consist of 250 primarily new construction homes, with the potential of including up to 10 existing low-income homes, located in New Mexico. Each home will consist of:

1. Typically 20kW Solar Array – Some variation depending on the roof configuration of the home;
2. A 57.6kWh Battery;
3. A smart panel that provides for full home automation and control solution capability of controlling HVAC, Hot Water Heaters, EV charging and all switched loads; and
4. A fully capable four quadrant inverter that allows for the ability to correct power factor and overall Distributed Energy Resource ("DER") control to support phase balance correction for the distribution feeder for the benefit of all customers, not just the customers where the resources are located.

The Pilot is a demand response ("DR") and DER demonstration in EPE's New Mexico retail service territory. EPE's counterpart in this Pilot, Creation Energy, will supply, develop, install, commission, and operate DR/DER resources across up to 250 customer sites. Creation Energy will manage execution—deployment, commissioning, and ongoing operations of the installed resources and platform—working collaboratively with EPE throughout. EPE will communicate dispatch and scheduling needs to Creation Energy through a software interface, including the timing and amount of load reduction and/or DER output requested. Creation Energy will implement dispatch instructions as directed by EPE.

Q8. ARE YOU SPONSORING ANY EXHIBITS IN SUPPORT OF YOUR TESTIMONY?

A. Yes, I am sponsoring the following exhibits:

- Exhibit DCH-1 EPE 2025 IRP Final Action Plan;
- Exhibit DCH-2 Creation Energy Master Power Purchase Agreement;
- Exhibit DCH-3 Statement of Work 1; and
- Exhibit DCH-4 Statement of Work 2.

III. EPE'S 2025 IRP

Q9. WHAT IS EPE'S 2025 IRP?

A. EPE's 2025 IRP is a comprehensive, long-term planning document developed in accordance with the New Mexico Integrated Resource Planning Rule (17.7.3 NMAC) and accepted by the Commission on December 18, 2025.[1] The 2025 IRP[2] evaluates how EPE can reliably and cost-effectively meet customers' future energy and capacity needs over a 20-year planning horizon from 2026 through 2045.

---

[1] NMPRC Case No. 24-00260-UT, *El Paso Electric Company's Integrated Resource Plan Filing for the Period of 2025-2044 Pursuant to 17.7.3 NMAC*, Order Accepting Integrated Resource Plan and Requiring Further Actions by El Paso Electric Company (Dec. 18, 2025).

[2] https://www.epelectric.com/files/24-00260-UT-2025-09-02-EPE-Integrated-Resource-Plan-Report.pdf

Q10. WHAT OBJECTIVES DOES THE 2025 IRP SEEK TO ACHIEVE?

A. The 2025 IRP evaluates how EPE can reliably and cost-effectively meet customers' future energy and capacity needs over a 20-year planning horizon. This long-term strategy serves as a critical blueprint for aligning the Company's resource mix with New Mexico's decarbonization mandates, including the path toward a carbon-free energy portfolio by 2045 as outlined in the New Mexico Renewable Energy Act ("REA").

Q11. WHAT TYPES OF RESOURCES DID EPE CONSIDER IN THE 2025 IRP?

A. EPE conducted a rigorous assessment of numerous scenarios and sensitivities, modeling various combinations of supply-side and demand-side resource options. This evaluation integrated new generation, transmission upgrades, wholesale market participation, and non-wires alternatives, to determine how best to meet future New Mexico customer needs consistent with the REA.

Q12. WHAT ARE THE PRIMARY OBSTACLES TO ACHIEVING THE GOALS SET BY NEW MEXICO'S RENEWABLE ENERGY ACT?

A. Relying solely on current, commercially available supply-side resources to meet the REA's carbon-free mandate may be cost-prohibitive. Consequently, EPE's analysis and stakeholder discussions focused heavily on alternative solutions, such as emerging technologies, enhanced transmission and market connectivity, and demand-side "non-wires" alternatives. Several of these key alternatives ultimately informed and shaped the 2025 IRP Final Action Plan.

Q13. CAN YOU ELABORATE ON THE 2025 IRP FINAL ACTION PLAN?

A. Yes. The 2025 IRP includes the Final Action Plan which is included as my Exhibit DCH-1. This Final Action Plan was established with public input from, engagement with, and in collaboration with participants from 84 organizations including community officials from EPE's service territory, representatives from the Commission's Utility Division Staff, private industry, nonprofit organizations, federal agencies, individual residential customers and research organizations. The Final Action Plan identifies near-term and longer-term steps to address emerging resource needs while preserving flexibility. These actions include further evaluation of transmission investments and targeted pilot projects to improve EPE's understanding of demand-side flexibility.

Q14. WHERE IN EPE'S FINAL ACTION PLAN IS A PLAN FOR DEMAND SIDE RESOURCES ADDRESSED?

A. Item 5 in EPE's Final Action Plan specifically identifies the 250 home Pilot Program. It states:

> *5. EPE will file an application for and seek cost recovery for a pilot program for demand response (DR) and distributed energy resources (DER) located on up to 250 customer residences no later than 90 days after Commission acceptance of EPE's 2025 IRP.*

On March 17, 2026, EPE filed notice in Docket No. 24-00260-UT that it required an additional 30 days to file the Application.

Q15. IS EPE SEEKING APPROVAL FOR COST RECOVERY IN THIS DOCKET?

A. Yes. I will discuss this later in my testimony.

IV. <u>250 HOME PILOT PROJECT PROPOSAL</u>

Q16. PROVIDE AN OVERVIEW OF THE PILOT PROJECT PROPOSAL.

A. The Pilot Project is a unique and new approach to DERs. By combining batteries, solar, demand response, and energy efficiency, the result is a contracted capacity product that is visible and fully dispatchable. The Pilot Project is designed to reduce EPE's peak load, improve system load factor and provide needed capacity on EPE's system. In addition, the Pilot includes potential technical benefits that will assist with power factor correction and phase balance on the distribution feeder connected to participating homes. This will help reduce technical losses on the grid and improve the power quality for all customers on the feeder.

These issues of peak load, power factor and phase balance have existed on the grid for decades, and the Pilot Project will give EPE visibility and full control for dynamic dispatch to meet the needs of our system and improve the reliability and resiliency of the grid.

Q17. HOW DOES THE PILOT PROJECT PROVIDE GUARANTEED CAPACITY?

A. Historically, DERs have been part of a program or delivered as a single resource type. Under the Pilot Project proposal, EPE has contracted with Creation Energy in a purchased power agreement ("PPA") for a capacity resource consisting of an aggregation of four different DERs (solar, battery, demand response and energy efficiency). Under the PPA, Creation Energy will be responsible for the operation and the comparable performance-based penalties that EPE would require of a third-party supply-side resource. This PPA structure allows EPE to effectively plan and incorporate these new DERs in a reliable and guaranteed manner in our resource portfolio. The Pilot proposal PPA is attached to my direct testimony as Exhibit DCH-2.

Q18. WHY IS THE PILOT PROJECT PROPOSAL PPA STRUCTURED AS THREE AGREEMENTS?

A. Exhibit DCH-2 is the Master Power Purchase Agreement that sets forth the general terms and conditions applicable to the Pilot Project, and all future DER projects with Creation Energy. Each individual project would have its own Statement of Work issued under the Master Power Purchase Agreement. Exhibit DCH-3 is Statement of Work 1 and comprises a single demonstration DER located at EPE's Eastside Operations Center in El Paso. Exhibit DCH-4 is Statement of Work 2, which addresses the first multi-home community project that will demonstrate Creation Energy's technologies and how EPE can utilize those associated DER resources to most effectively and efficiently serve its customers. Any future projects between Creation Energy and EPE would be similarly memorialized through new Statements of Work issued under the Master Power Purchase Agreement.

Q19. HOW DOES THIS PROJECT ADDRESS EPE'S 2025 IRP INITIATIVES?

A. The Pilot Project addresses near-term peak capacity needs, provides flexible demand-side capability, and supports compliance with renewable and resource planning requirements. The aggregated solar, battery, demand response and grid efficiency capabilities operate as a distributed resource that reduces peak system load and increases grid reliability.

Q20. DOES THIS PROJECT BENEFIT EPE'S CUSTOMERS SERVED AT BOTH THE TRANSMISSION AND DISTRIBUTION LEVEL?

A. Yes. This Pilot Project is designed to provide benefits at both the distribution and transmission system levels. While the participating resources are interconnected on the distribution system, the load they serve and shape would otherwise be served by transmission-connected generation and supported by transmission infrastructure. By using distributed energy resources to meet incremental residential load and reduce coincident peak demand, the Pilot reduces the net load imposed on the transmission system.

Q21. WHAT WORK HAS BEEN DONE TO STUDY THIS SOLUTION, ITS IMPACT ON THE EPE GRID, AND THE BENEFITS IT CAN DELIVER FOR CUSTOMERS?

A. Over the past two years, EPE has worked closely with Energy and Environmental Economics, Inc. ("E3"), EPE's 2025 IRP consultant, to appropriately model the technical and economic impact of DERs in the Company's overall resource mix. This effort was integrated into the New Mexico 2025 IRP process and proved both the technical benefits and the economic benefits during this process.

Also, during this time, EPE was introduced to Creation Energy, who participated as an active stakeholder throughout the New Mexico 2025 IRP process. Their solution creates a new DER model that allows EPE to schedule the dispatch of the DER resource as part of EPE's resource mix. Creation Energy has designed a combination of resources to specifically target the historical problems of peak load, load factor, power factor, phase balance and grid efficiency.

Q22. PLEASE PROVIDE AN OVERVIEW OF THE NEW MEXICO 2025 IRP PROCESS RELATED TO DERS AND THE WORK THAT WAS DONE WITH THE IRP STAKEHOLDERS.

A. EPE's 2025 IRP facilitated stakeholder process occurred over an eight-month period where the Company collaborated with the public stakeholders I listed above. Early in the process, EPE heard from stakeholders that they wanted to see EPE actively engage in modeling and studying DERs. The stakeholder group helped EPE create a variety of modeling cases. The net result of the study work showed that DERs provided a very high value to the system and could help reduce the need for utility scale or supply side, resources.

Based on these results, stakeholders desired EPE to commit to demonstrating DERs. Working with stakeholders, EPE committed to this 250-home demonstration project.

Q23. HAS EPE PERFORMED AN ECONOMIC ANALYSIS OF THE PROPOSED PROJECT?

A. Yes. During the 2025 IRP facilitated stakeholder process, EPE modeled a scenario featuring a fully scaled-up residential Distributed Energy Resource ("DER") program. This model included 25,000 new homes with attributes similar to the proposed Pilot Project. The analysis identified significant avoided costs of $100 million to $140 million per year over the planning horizon, prior to accounting for project execution costs and incremental value streams that DERs can deliver.

Q24. ARE THERE POTENTIAL VALUE STREAMS FOR DERS THAT EXTEND BEYOND THOSE CAPTURED IN THE 2025 IRP MODELING?

A. Yes. While capacity expansion and production cost models are excellent tools for evaluating system-wide energy and capacity adequacy, DERs offer localized advantages that typically sit outside that scope. These include geographically targeted benefits, such as the ability to defer specific transmission and distribution ("T&D") upgrades. Furthermore, by generating power closer to the end-user, DERs can reduce line losses and provide enhanced local resilience and ancillary services that provide a layer of value additional to traditional bulk-system savings.

Q25. HOW IS EPE ADDRESSING THESE ADDITIONAL POTENTIAL VALUE STREAMS?

A. EPE is actively evaluating these additional value streams as a core component of its broader DER assessment strategy. Through the Company's 2025 IRP process and supplemental analytical work, EPE is collaborating with E3 to develop methodologies for quantifying these localized benefits. EPE's objective is to ensure that value streams, such as locational T&D deferral or enhanced resilience, are accurately characterized and integrated into the Company's long-term resource planning decisions. E3 is uniquely situated to evaluate these value streams based on substantial prior experience analyzing demand response and distributed energy resources and assessing their contributions to system capacity, energy costs, and reliability for purposes of integrated resource planning and regulatory review.

Q26. HOW WILL THE PILOT PROJECT HELP INFORM THIS WORK?

A. The Pilot Project will serve as a critical bridge between theoretical modeling and operational reality. By observing how aggregated residential DERs perform under actual grid conditions, EPE can move from estimated benefit assumptions to data-driven insights. The operational experience gained here will directly refine our evaluation frameworks, allowing for more precise integration of distributed resources in future planning studies.

Q27. WHAT PROTECTIONS EXIST IF THE PROJECT UNDERPERFORMS?

A. The PPA includes enforceable performance obligations for capacity, availability, and verified demand response reductions. Payments are contingent on actual delivered services, not projected performance. For DERs to add effective capacity to EPE's resource mix, these performance obligations must be equivalent to supply side resources.

Q28. WHAT IS CONCENTRATED DEPLOYMENT?

A. Concentrated deployment is a focused siting of DRs and DERs in specific locations where their aggregated response can provide enhanced capacity, reliability, or distribution-level benefits.

Q29. COULD CONCENTRATED DEPLOYMENT OF THE PROPOSED PILOT CREATE ANY RELIABILITY RISKS?

A. No, because systems are distributed across multiple feeders and controlled centrally. Additionally, the utility retains authority to curtail, dispatch, or limit operations to preserve grid safety. In addition, EPE will be coordinating closely with Creation Energy's deployment team and would not allow a concentration of DERs that could backfeed our substations and create reliability concerns.

Q30. DO THESE SYSTEMS PRESENT ANY SAFETY RISKS FOR UTILITY PERSONNEL?

A. No. The DER solution complies with IEEE 1547-2018 and the testing standard UL 1741SB. These standards have been developed to ensure all DER equipment 'islands', or separates from the utility grid, if there is a grid outage to protect our personnel.

Q31. DO THESE SYSTEMS PRESENT ANY SAFETY RISKS FOR EMERGENCY RESPONSE PERSONNEL?

A. No. As previously stated, the DER solution complies with IEEE 1547-2018 and the testing standard UL 1741SB. These standards have been developed to ensure all DER equipment can be shut down by emergency response personnel with the push of a single button on the home.

Q32. DOES THE UTILITY HAVE CONTROL OF THE PROPOSED PILOT PROJECT DR/DER EVENTS?

A. Yes. All assets are metered on the utility side, enabling direct dispatch scheduling and real-time event control. The utility can charge, discharge, and call demand response events as needed to reduce peak demand and support reliability while the new technology operates 24/7 to improve power factor.

Q33. HOW WILL EPE VERIFY THE PERFORMANCE OF INDIVIDUAL HOMES AND OF THE AGGREGATED FLEET?

A. Performance is validated using utility side metering, telemetry, and event-level verification protocols. Because all systems report on the utility side of the meter, data is consistent and auditable. As outlined in Exhibit DCH-4, Creation Energy will be responsible for monthly and annual performance reporting. EPE will validate the performance reporting for compliance with obligations by Creation Energy as addressed in Exhibit DCH-4.

Q34. WHO BEARS THE RISK IF THE VENDOR CANNOT DELIVER THE CONTRACTED PERFORMANCE?

A. The vendor bears the performance risk. The PPA includes liquidated damages, replacement obligations, and performance guarantees that protect ratepayers.

V. PILOT PROJECT COST RECOVERY

Q35. WHAT IS THE TOTAL ESTIMATED COST OF THE PILOT PROJECT?

A. The total estimated costs of the Pilot Project include the costs associated with equipment necessary to test the Pilot Projects dispatch methods (Statement of Work 1), the costs associated with Pilot Project over the term of the 30-year PPA (Statement of Work 2), and the costs of analyzing the valuation of DERs as conducted by E3. These costs are as follows:

- Statement of Work 1 has a flat cost of $350,000.
- Statement of Work 2 has a first-year cost of $1.64 million assuming all 250 homes are completed at the start of the first year operational period, and

escalating 2% thereafter. The nominal cost over the 30-year term of the agreement is $66.5 million.

- E3 value stream analysis has a cost of $46,934 as of the filing of my testimony.

Q36. DESCRIBE THE NEED FOR THE COSTS ASSOCIATED WITH STATEMENT OF WORK 1.

A. Developing DERs as part of a reliable, dispatchable utility resource mix will require EPE to test the different dispatch methods to optimize our system in different seasons and for different grid scenarios. The EPE demonstration site allows us to appropriately test these scenarios as well as verify the combined capability of the aggregated DERs prior to implementation with our customers. In addition, EPE will be testing the measurement and verification capability of the DER platform and metering to develop the reporting requirements for contract performance metrics as well as all interconnection one-line diagrams and required agreements.

Q37. ARE THE COSTS ASSOCIATED WITH STATEMENT OF WORK 1 REASONABLE AND NECESSARY?

A. Yes, this demonstration project will provide the necessary technical, operational, and contractual testing and requirements for the Pilot Project proposal.

Q38. DESCRIBE THE COSTS ASSOCIATED WITH STATEMENT OF WORK 2.

A. Statement of Work 2 provides for a 30-year PPA for the proposed Pilot Project. It includes all costs for the project, including planning, deployment, operation, customer engagement, maintenance and reporting for the term of the PPA. This structure is similar to the requirements and term of a supply side PPA. EPE's cost under Statement of Work 2 is primarily a capacity payment for the commissioned and accepted resources: $320/kW-year for the applicable Contract Capacity, for up to 5.125 MW during the 30-year Operational Period, with 2% annual escalation beginning 1 year after the Statement of Work 2 Effective Date.

Q39. ARE THE COSTS ASSOCIATED WITH STATEMENT OF WORK 2 REASONABLE AND NECESSARY AND SHOULD THEY BE APPROVED BY THE COMMISSION?

A. Yes. These costs are reasonable and necessary and should be approved by the NMPRC because they are performance-based, scalable, and risk-mitigated, while enabling EPE to demonstrate demand response and DER capability in its New Mexico service territory with limited upfront financial exposure.

Q40. ARE THE COSTS ASSOCIATED WITH E3'S WORK ON THIS PILOT PROJECT REASONABLE AND NECESSARY AND SHOULD THEY BE APPROVED BY THE COMMISSION AS PART OF THE PILOT COSTS?

A. Yes. The costs associated with E3's analysis of demand-side energy resource projects are important in order to determine the values (value streams) to customers that traditional capacity expansion and planning models do not capture. As part of the Pilot, these value streams can be quantified to move toward a more complete review of demand-side resources.

Q41. HOW WILL EPE RECOVER THE COSTS ASSOCIATED WITH THE PILOT PROJECT?

A. EPE requests authority to defer approved Pilot Project costs for recovery in a future ratemaking proceeding.

VI. <u>COMPLIANCE WITH APPLICABLE STATUTE AND REGULATIONS</u>

Q42. WHY IS EPE SEEKING APPROVAL UNDER THE GRID MODERNIZATION STATUTE?

A. The Application for the Pilot Project is appropriately reviewed under the Grid Modernization Statute, which authorizes requests by utilities for the approval of rate designs that incorporate technologies, equipment, or infrastructure associated with grid modernization, which, by definition, includes projects that are reasonably expected to improve system reliability, efficiency, resilience, and meet energy demands through a distributed energy portfolio and demand response capability.

Q43. DOES THE APPLICATION ADDRESS THE CRITERIA SET FORTH IN THE GRID MODERNIZATION STATUTE AT 62-8-13(B)?

A. Yes. The Pilot Project fits multiple categories of projects listed in the statute, the first being the most obvious. The Pilot Project will provide technologies to enable demand response. It will also enhance distribution system planning capabilities and provide systems or technologies to the public utility that enhance them. Finally, the Pilot Project will utilize energy storage systems and microgrids that support circuit-level grid stability, power quality, reliability, or resiliency, or provide temporary backup energy supply.

Q44. IS EPE REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ("CCN") FOR THE PROPOSED PILOT?

A. No. Under the terms of the Pilot Project's PPA, EPE does not own, lease, or operate the Pilot facilities; rather, third-party entities will own and operate the facilities.

Q45. DOES THE GRID MODERNIZATION STATUTE ALSO PROVIDE FOR COST RECOVERY OF PROJECTS APPROVED UNDER THE ACT?

A. Yes. It is my understanding that a public utility that undertakes grid modernization projects approved by the commission may recover its reasonable costs through an approved tariff rider, in base rates, or by a combination of the two. As discussed above, EPE requests authorization to defer Commission-approved Pilot Project costs for recovery in a future rate making proceeding.

Q46. IS EPE'S DR DER PILOT PROJECT ALIGNED WITH NEW MEXICO'S GRID MODERNIZATION EFFORTS AND PRIORITIES?

A. Yes. Demand response and distributed energy resources are foundational to grid modernization and smart grid deployment. New Mexico's Energy, Minerals, and Natural Resources Department has tasked the Energy Conservation and Management Division ("ECAM") with guiding energy infrastructure policy and planning in New Mexico, as mandated by the Grid Modernization Roadmap Act of 2020.[3] In its most recent guidance, ECAM observed that distributed energy resources advance "not only . . . New Mexico's energy transition despite resource constraints but also enhances asset utilization through achieved efficiencies that make the grid more reliable via resource adequacy capacity provided." ECAM further observed that demand response participation "benefit ratepayer affordability by deferring upgrades and minimizing peak capacity procurement while

[3] NMSA 1978, § 71-11-1 (2023).

compensating peak-shaving behavior" and that demand response and distributed energy resources "serve New Mexico's long term decarbonization goals by reducing utility needs to procure power from gas-fired peaker plants."[4]

Q47. IS THE DR DER PILOT PROJECT REASONABLY EXPECTED TO SUPPORT THE ENVIRONMENTAL GOALS OF GRID MODERNIZATION?

A. Yes. The Pilot Project is a necessary building block to enable greater resilience and reliability on EPE's distribution grid and will ultimately allow its customers to maximize the environmental benefits of grid modernization. Additionally, the Pilot Project will enable demand-side management programs and facilitate EPE's ability to maximize the integration of distributed renewable energy resources.

Q48. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

---

[4] https://www.emnrd.nm.gov/ecmd/wp-content/uploads/sites/3/ECAM-Electric-Grid-Modernization-Update-1.10.25.pdf

El Paso Electric

EL PASO ELECTRIC
2025 INTEGRATED RESOURCE PLAN

EPE Response

EPE disagrees that this is an unresolved issue. Action item 12 is that "EPE will implement its New Mexico time varying rate pilot program (TVRPP) filing that was recently approved by the NMPRC, including recruiting participants, launching the program, and analyzing usage data to inform future TOD rates and other programs." The TVRPP was the subject of a Commission proceeding that was resolved by an approved stipulation between EPE, Utility Division Staff, the New Mexico Department of Justice, and the Coalition for Clean Affordable Energy in early 2025. The program was proposed to test three different types of time-varying rates among residential and small general service customers. After the stipulation was filed, an additional time-varying rate was incorporated into the pilot on the proposal of former Commissioner James Ellison. The stipulation included a budget of $908,800 for the reasonable costs of the pilot program. These costs will be recovered through base rates in a future ratemaking proceeding. Customer protections of the TVRPP include an opportunity for customers to opt-out at any time. Given that EPE's TVRPP already includes testing multiple rates at once, an opt-out option, and a budget, identification of Action item 12 in the list of unresolved issues is not accurate.

Final Action Plan

As explained in EPE's responses to the "unresolved" issues, EPE revised certain Action Plan Items. Therefore, EPE presents the following Final Action Plan:

1. EPE will take the necessary steps to support the practical completion and commercial operation of the Carne Project selected from the 2021 RFP, which has a planned 2026 COD.
2. EPE will continue to pursue Commission approval of the Santa Teresa Project REA procurement pending in Docket No. 25-00038-UT, selected from its 2023 RFP. A final order is expected by the end of 2026, and the planned COD is in 2026.

3. EPE will pursue resources in EPE's 2025 RFP for supply-side and demand-side resources to meet EPE's RPS requirements and to proactively attempt to secure additional RPS resources prior to the expiration of federal tax credits. EPE will integrate the results of EPE's 2025 RFP into the needs identified in the 2025 IRP[15].
4. Following Commission acceptance of the 2025 IRP, EPE will issue an RFP for supply side and demand side resources to address the current capacity needs and renewable portfolio standards (RPS) resource needs to meet Renewable Energy Act (REA) targets through 2030. EPE will be explicit on the types of resources that may meet its system needs, including demand-side resources, by directing potential bidders to relevant sections in EPE's 2025 Integrated Resource Plan report.
5. EPE will file an application for and seek cost recovery for a pilot program for demand response (DR) and distributed energy resources (DER) located on up to 250 customer residences no later than 90 days after Commission acceptance of EPE's 2025 IRP.
6. EPE will evaluate the performance of the electric vehicle (EV) managed charging program approved in EPE's Transportation Electrification Plan (TEP) in March 2024 to guide potential expansion and integration into broader demand-side management strategies.
7. EPE will explore vehicle-to-grid (V2G) opportunities and bidirectional EV charging, with the goal of evaluating its potential to support grid operations, enhance customer value, and integration with distributed energy management strategies.
8. EPE will continue to work on grid modernization efforts, including evaluating AMI-enabled capabilities to support DER coordination, demand response, and customer engagement. EPE will develop an internal process to review the cost-effectiveness and viability of

[15] For informational purposes, this RFP is also looking for capacity resources in Texas.

incorporating grid-enhancing technologies with the goal of incorporating them into proposed and/or existing transmission and distribution resources.

9. EPE will take steps to initiate replacing the Eddy Tie and seek all necessary regulatory approvals.
10. EPE will explore tariffs and customer protection mechanisms for large load customers and other New Mexico rate classes. EPE expects to use this information to inform an expected upcoming filing for a large load tariff, no later than Q1 2026. EPE will meet with stakeholders to gather input on potential large load customer connections to EPE's system in advance of its filing.
11. EPE will continue to explore expanded regional market participation and take proactive measures to implement its selected market, Markets+.
12. EPE will implement its New Mexico time varying rate pilot program (TVRPP) filing that was recently approved by the NMPRC, including recruiting participants, launching the program, and analyzing usage data to inform future TOD rates and other programs.
13. EPE will file annual reports no later than September 1, 2026 and September 1, 2027 to demonstrate the progress of its Action Plan and meet with stakeholders to discuss those reports.

EXECUTION

Distributed Energy Resources Aggregation Platform Master Power Purchase Agreement

Between

Creation Energy LLC

And

El Paso Electric Company

March 5, 2026

Table of Contents

MASTER POWER PURCHASE AGREEMENT

This Master Power Purchase Agreement (the "Agreement"), dated as of March 5, 2026 (the "Effective Date"), is made and entered into between Creation Energy LLC, a Texas limited liability company (the "Seller"), and El Paso Electric Company, a Texas corporation (the "Purchaser").

RECITALS

A. Purchaser is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to (i) the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission and (ii) the laws of the State of Texas and the rules and regulations of the Public Utility Commission of Texas.

B. Purchaser is committed to continuing to improve its clean energy portfolio, electric system performance, system utilization and customer engagement by interacting with resources at the edge of the distribution grid (Distributed Energy Resources or "DERs") within Purchaser's service territory.

C. Seller offers a Distributed Energy Resources Aggregation Platform (the "DERA Platform") that enables sophisticated grid performance support, deep situational awareness and management of DERs.

D. As an initial Statement of Work under this Agreement ("Statement of Work #1"), Purchaser and Seller desire to establish a project for a technology demonstration site at the Purchaser's Eastside Operations Center in El Paso, Texas.

E. Purchaser and Seller further desire to enter into a second Statement of Work ("Statement of Work #2") that, subject to conditions set forth in Statement of Work #2, including pre-approval of the New Mexico Public Regulation Commission, would establish a technology demonstration project in New Mexico for 250 Customer Sites in Purchaser's retail service territory allowing deployment of the DERA Platform and demonstration of how the DERA Platform may enable Purchaser to unlock the value of individual and aggregated DERs to improve grid utilization and help optimize grid operation for the benefit of its customers.

F. Purchaser and Seller wish to enter into this Agreement to facilitate the Statements of Work described in the above Recitals and potential future Statements of Work deploying Seller's DERA Platform within Purchaser's retail service territory.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

This Agreement does not authorize any Work. Purchaser will authorize Work via Statement of Work(s) issued pursuant to the terms of the Agreement and executed by both Seller and Purchaser. Seller acknowledges and agrees that there is no guarantee of Work under this Agreement beyond what is defined by each Statement of Work. Seller acknowledges and agrees that Purchaser may request additional Statement of Work(s) at any time. Subject to the terms and conditions of this Agreement, Purchaser acknowledges and agrees for each executed Statement of Work, Seller will be the only provider for this Work.

DEFINITIONS

As used in this Agreement, the following defined terms have the meanings set forth below:

"ACAP Agent" means a Seller-provided proprietary device that enables DER equipment for use by the DERA Platform at a Site.

"ACAP Pricing Table" is the table detailing the price for the installation and operation of the Contract Capacity of DERs for each Statement of Work, a sample attached hereto as Exhibit J.

"Acceptance Criteria" means the criteria for accepting the ACAP at a Site as set forth on the Commissioning Certificate.

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto.

"Agreement" has the meaning as set forth in the preamble, and includes all schedules and exhibits incorporated hereto and each Statement of Work.

"Aggregated Capacity" or ***"ACAP"*** means the aggregated DER capacity of Commissioned and Accepted Sites, as set forth on the Commissioning Certificate for the Sites and presented for dispatch in the Utility Portal.

"Ambient Temperature" means the referenced outdoor temperature as defined by publicly available weather station(s) which are within close proximity of a representative sample of Sites and mutually agreed upon by the Parties and set forth in Exhibit B, which may be updated from time-to-time upon agreement by the Parties.

"Applicable Laws" means all applicable laws, statutes, rules, regulations, ordinances and orders of any Governmental Authority having jurisdiction over Seller, Purchaser, or the Work performed under this Agreement.

"Available Capacity" or "Available ACAP" means the ACAP as presented 15 minutes prior to the Dispatch Event start within the Utility Portal that may be dispatched by Purchaser.

"Business Day" means a day other than a Saturday, a Sunday, or a day on which commercial banking institutions in the State of Texas are authorized or obligated by Applicable Laws to be closed.

"Claim" means any demand, claim, action, investigation, legal proceeding (whether at law or in equity) or arbitration.

"Commissioned and Accepted Site" means, with respect to a Site, that Purchaser has either (1) accepted the Commissioning Certificate or (2) allowed the Commissioning Acceptance Period to expire.

"Commissioned Site" means, with respect to a Site, that the installation is complete for the Site, the Commissioning Certificate has been completed and a Commissioning Notice has been sent to Purchaser.

"Commissioning Acceptance Period" means, with respect to a Site, a period of ten (10) Business Days following the date Seller provides Purchaser with the Commissioning Notice pursuant to Section 4.1, whereby Purchaser has the right to dispute Seller's assertion that the Acceptance Criteria has been met for such Site. The Commissioning Acceptance Period will expire upon either (1) acceptance of the Commissioning Certificate for such Site or (2) expiration of the Commissioning Acceptance Period for such Site; provided, however, that the Commissioning Acceptance Period will be extended if Purchaser submits a timely Commissioning Dispute Notice.

"Commissioning Certificate" means a certificate issued for a Site in substantially the form provided in Exhibit C (or in such form as otherwise agreed to by the Parties in writing), outlining certain Site details, including the ACAP of the Site.

"Commissioning Date" means, with respect to a Site, the date set forth on the Commissioning Certificate for such Site and shall match the date of the Commissioning Notice to Purchaser.

"Commissioning Dispute Notice" means, with respect to a Site, notice provided by Purchaser within the Commissioning Acceptance Period rejecting the Commissioning Certificate by submitting the Commissioning Dispute Notice (a sample of which is attached hereto as Exhibit D) by way of electronic mail or other mutually agreed upon method to Seller to dispute Seller's determination that the Acceptance Criteria have been met for the applicable Site and lists the reasons for such dispute.

"Commissioning Notice" means, with respect to a Site, electronic mail, or other mutually agreed upon method, to notify Purchaser that Seller has deemed a Site as having met the Acceptance Criteria and is a Commissioned Site.

"Confidential Information" means all non-public, proprietary, or confidential information and materials , disclosed or existing in written, oral, electronic or other form or media that are clearly communicated as or marked "Confidential" at the time a Party shares such information with the other Party, including, but not limited to, trade secrets, documents, data, drawings, studies, projections, plans, contracts and other written information that relate to the Parties' technology, products, objectives, or concerning business plans or other financial information.

"Contract Capacity" means the ACAP to be deployed under each Statement of Work as further defined in Exhibit F.

"Contract Capacity Deployed" means the total ACAP installed under a Statement of Work, which may not exceed the Contract Capacity by more than five percent (5%) unless mutually agreed in writing by the Parties.

"Contract Capacity Price" means the price per kW ($/kW) for Contract Capacity as defined in the ACAP Pricing Table contained in each Statement of Work.

*"**Credit Rating**"* of any Person means the lowest rating assigned to such Person's long-term debt or deposit obligations (unenhanced by third-party support) by Standard & Poors and Moody's. If such Person has no outstanding long-term debt or deposit obligations, or if no

rating is assigned to such obligations, "Credit Rating" shall mean the lowest general corporate credit rating or long-term issuer rating assigned to such Person by Standard & Poors or Moody's.

"Cure Period" has the meaning set forth in Section 14.1(a)(2).

"Custom Dispatch" means a dispatch that is different than the Standard Dispatch that the Purchaser may schedule via the Utility Portal.

"Custom Dispatch Request" means a request for Custom Dispatch.

"Customer(s)" means Purchaser's end-use customer(s).

"Customer Portal" means the web-based interface that allows monitoring and Customer operational preferences to be set for DERs.

"Customer Site" means a unique location identified by an account number, meter number, customer number, and/or a locational premise number and an electric power meter(s) that measures electric power usage at the premise and where Seller will install DER(s) and provide ACAP pursuant to this Agreement.

"Demand Response" or "DR" means a reduction in demand at a Site from the Site's expected or potential consumption.

"DERA Platform" has the meaning set forth in the recitals.

"DER(s)" means Distributed Energy Resource(s) which may include, but are not limited to, solar, batteries, electric vehicles, Demand Response, and wind.

"DER Registry" means the Collaborative Utility Solutions (CUS) non-profit DER Registry.

"*DER Site*" means a unique Site other than a Customer Site identified by a specific geographical location (latitude/longitude) for deployment of DERs (such as a grid optimization station) that is being monitored or controlled for ACAP.

"Delivered Capacity" means the ACAP delivered for any Dispatch Event.

"Deployment Period" means the period of time from the Effective Date under a Statement of Work through the date of the last Commissioned and Accepted Site under such Statement of Work required to meet the Contract Capacity, or other requirements as defined in the applicable Statement of Work. The estimated Deployment Period shall be defined in the ACAP Pricing Table.

"Dispatch Event(s)" means a specified duration of time beginning and ending at designated points for which Purchaser schedules ACAP in the Utility Portal for a Standard Dispatch, Custom Dispatch, or any other dispatch permitted under this Agreement.

"Dispatch Request(s)" means a request from Purchaser to dispatch all, or a portion of, available ACAP through the Utility Portal at the sole discretion of Purchaser.

"Dispute" means any action, claim, dispute, or controversy arising directly or indirectly out of or relating to this Agreement, or the breach thereof.

"Effective Date" has the meaning set forth in the preamble.

"Financing Parties" means lenders and equity investors (including any trustee or agent on behalf of such party) providing equity, tax equity or debt financing or refinancing to Seller or any of its Affiliates, whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

"Force Majeure Event" means any event or circumstance, or combination of events and circumstances, that delays or prevents a Party from performing its obligations hereunder, which events and/or circumstances are (i) beyond the reasonable control of, and without the fault or negligence of, the Party claiming excuse and (ii) which by exercise of due diligence could not reasonably have been avoided. "Force Majeure Events" may include (without limitation), to the extent satisfying (i) and (ii) above, an act of God, war (whether declared or undeclared), sabotage, piracy, riot, insurrection, civil unrest or disturbance, military or guerilla action, terrorism, economic sanction or embargo, explosion, fire, earthquake, abnormal weather condition or action of the elements, hurricane, flood, lightning, abnormally high winds, tornado, volcano, hail storms, drought, nuclear, chemical or biological contamination unless the source or cause thereof is brought to or near the Sites by the Party claiming excuse or its agents, a binding order of a Governmental Authority, the failure to act on the part of any Governmental Authority (including, without limitation, delays in permitting not caused by the Party seeking permits), unavailability of electricity from the Purchaser or any other applicable failure of Purchaser electric grid, and failure or unavailability of equipment, products or supplies outside of the Seller's control, labor strikes, slowdowns, work stoppages, or other labor disruptions, cyberattacks, ransomware, or other malicious act affecting critical infrastructure, information technology or operational technology systems, and pandemics, public health emergencies or epidemics (provided, however, that each Party acknowledges the effects of the COVID-19 pandemic as of the Effective Date, and that no delay or failure in performance is expected based on the scope of such effects as of the Effective Date). Except to the extent due to an independent Force Majeure Event, Force Majeure Event shall not include: inability, or excess cost, to procure any equipment necessary to perform this Agreement; acts or omissions of a third party (including vendors and contractors to Seller); failure to timely apply for, diligently pursue, or obtain any Permits; mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment; environmental contamination at any Site; events that affect the cost of equipment, materials, or labor, or changes in market conditions affecting the economics of either Party (including a change in equipment prices or labor rates or increased inflation) or any other economic hardship (including lack of money); failure or delays in delivery of equipment or materials; an inability to obtain labor, manpower, spare parts, materials, or equipment for the construction of any Site; failure or delay of a subcontractor or supplier involved in the construction of any Site to furnish labor, services, materials, or equipment in accordance with its contractual obligations; or changes of Applicable Laws.

"Governmental Authority" means any federal, state, tribal, local or municipal governmental body having jurisdiction over Seller, Purchaser, this Agreement, or any of the Work, services or transactions contemplate hereby, including any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; and/or any court or governmental tribunal.

"Grid Emergency Capacity" means any capacity available that is not included in Contract

Capacity, but is defined, authorized and approved within the Customer Portal and presented in the Utility Portal and is delivered with commercially reasonable efforts.

"Grid Emergency Event" means a Dispatch Event wherein Purchaser requests immediate dispatch of Contract Capacity Deployed plus Grid Emergency Capacity and both will be automatically scheduled for a duration of one hour. Grid Emergency Events may not be scheduled in advance but may be cancelled by Purchaser at any time during the Grid Emergency Event or extended for additional one-hour periods for up to four (4) continuous hours.

"Intellectual Property" means all intellectual property rights, including (i) copyrights, patents, industrial design rights, trademarks, logos, slogans, corporate names, trade names, rights of priority, and applications and registrations for any of the foregoing, (ii) inventions, trade secrets, know-how, mask works, software, firmware, specifications, designs, drawings, processes, data, methodologies, ideas, concepts, inventions, plans, techniques, tools, hardware, works of authorship, and (iii) other proprietary information and technology.

"Interconnection Agreement" means each agreement between Purchaser and Seller addressing interconnection of a Site to Purchaser's utility system grid for the purposes of this Agreement.

"Investment Grade" means a Credit Rating of both (a) Baa3 or higher by Moody's, and (b) BBB- or higher by Standard & Poors.

"kW" means kilowatt, which is one thousand (1,000) Watts.

"Letter of Credit" has the meaning set forth in Section 1.7(ii)(a).

"Lien" means (i) any mortgage, charge, lien, pledge, hypothecation, title retention arrangement or other security interest, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation; (ii) any easement, servitude, restrictive covenant, equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, license to use or occupy, assignment of income or monetary Claim; or (iii) any agreement to create any of the foregoing or allow any of the foregoing to exist.

"Losses" means any and all liabilities, judgments, penalties, fines, losses, damages (other than consequential or incidental damages) and reasonable costs and expenses.

"Monthly ACAP Invoice" has the meaning set forth in Section 3.2.

"Monthly Contract Capacity Price" means the Contract Capacity Price divided by twelve (12) including Price Escalation as defined in the ACAP Pricing Table.

"Monthly Progress Report" has the meaning set forth in Section 3.2.

"Monthly SREC Report" has the meaning set forth in Section 3.2.

"MW" means megawatt, which is one million (1,000,000) Watts.

"***Operational Period***" has the meaning set forth in the ACAP Pricing Table and begins at the end of the Deployment Period and continues through the time identified in the ACAP Pricing Table.

"Parties" means the Seller and Purchaser, each of which may be referred to individually as a "Party," and collectively as the "Parties."

"Payment Period" is a period of time, typically a calendar month, in which Work is performed to deploy ACAP and Seller bills Purchaser as set forth in Section 3 and as provided in a Statement of Work.

"Performance Guarantee" means the guarantee or guarantees of performance made by Seller under any Statement of Work in this Agreement, as further described in Article 3 and set forth in the applicable Statement of Work.

"Performance Guarantee Payment" means the total amount Seller owes Purchaser as a result of Seller failing to achieve a Performance Guarantee.

"Permits" means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any Governmental Authority having jurisdiction over the Work, including construction, ownership, operation and maintenance of DERs at the Sites, and performance of Seller's obligations herein.

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

"Production Reservation Invoice" provides for the Production Reservation Payment and the amount of any applicable Purchaser Taxes.

"Production Reservation Payment" to the extent agreed to by the Parties and set forth in any Statement of Work, is equal to the Production Reservation Price multiplied by the ACAP of a DER Site multiplied by the number of DER Sites specified in a Statement of Work that shall be put into production once payment is received.

"Production Reservation Price" is defined in the ACAP Pricing Table for each Statement of Work.

"Purchase Price" has the meaning set forth in Section 3.1.

"Purchaser" has the meaning set forth in the preamble.

"Purchaser Data" means all of Purchaser's information utilized in completing the Work under this Agreement including but not limited to all data collected for use within the DERA Platform.

"Purchaser's Representative" means the individual listed as the "Purchaser's Representative" on Exhibit A, who is acquainted with the Work and this Agreement.

"Purchaser Taxes" means any sales, use, excise, value added, gross receipts, consumption, property, import duties, tariffs, or similar taxes or fees imposed by any Governmental Authority on the Work.

"Ramp Time" means Purchaser's requested time period to change between the operating state of any existing system status at a Site to the required state for a Dispatch Event, or from Dispatch Event state back to normal operating state. This is generally described as the time to phase in and phase out of the Dispatch Event. The default Ramp Time will be three (3) minutes, unless otherwise set forth in any Statement of Work. Grid Emergency Events will achieve full Grid Emergency Capacity without consideration for any Ramp Time.

"Representatives" means a Party's officers, directors, employees, counsel, accountants, financial advisors, consultants and other advisors.

"Reserves Request" means the ACAP that is requested by Purchaser to be scheduled for non-active dispatch reserves (i.e., ACAP held for spinning or non-spinning reserves) at the sole discretion of Purchaser. Fulfillment of active Dispatch Requests has priority over fulfillment of Reserves Requests. Purchaser may schedule Reserves Requests up to 24 hours in advance and may schedule any portion, from zero to one hundred percent, of ACAP.

"Response Time" means the period of time required for the ACAP to achieve full capacity of the Dispatch Request(s) and shall always be less than ten (10) minutes from Purchaser's submission of the Dispatch Request. For scheduled Dispatch Requests, ACAP will achieve full capacity of the requested dispatch prior to the time scheduled for Dispatch Event initiation and at a rate allowing for the Ramp Time to have occurred.

"Security Fund" has the meaning set forth in Section 1.7.

"Seller" has the meaning set forth in the preamble.

"Seller Guaranty" has the meaning set forth in Section 1.7(ii)(b).

"Seller Intellectual Property" means all Intellectual Property owned or licensed by the Seller, including derivatives and modifications relating to the Work, including the DER Sites, any training processes, documentation or development materials relating to the foregoing, and the contents of any service or maintenance manuals, test and inspection procedures, client, customer and supplier lists, and financial and business strategies that are proprietary to the Seller.

"Seller Taxes" means applicable corporate and individual taxes that are measured by net income or profit and are imposed by any Governmental Authority on the Seller, its employees or Subcontractors due to the execution or performance of this Agreement and the allocated amount of any property taxes levied against the Seller's facilities.

"Seller's Representative" means the individual listed as the "Seller's Representative" in Exhibit A, who is acquainted with the Work and this Agreement.

"Site(s)" means each, or any combination of, Customer Site(s) and DER Site(s).

"Solar Renewable Energy Credit(s)" or "SREC(s)" means the renewable energy credit(s) for solar production from the deployed solar DERs on a Site.

"Standard Dispatch" means a mutually agreed upon dispatch methodology that will occur at a set interval of time unless Purchaser schedules a Custom Dispatch.

"Statement of Work" or "SOW" means the specific definition and pricing of the Work to be performed in association with this Agreement. Each Statement of Work will be governed by and forms a part of this Agreement. A sample Statement of Work is contained in Exhibit I.

"Statement of Work Term" means the period commencing on the effective date of the Statement of Work and, unless terminated earlier as provided in the Agreement or the applicable Statement of Work, continuing through the (1) Deployment Period as defined on the

ACAP Pricing Table in the Statement of Work and continuing through the (2) Operational Period as defined on the ACAP Pricing Table in the Statement of Work.

"Subcontractors" means any Person with whom the Seller has entered into (including by virtue of assignment) any contract or agreement for such Person to perform any part of the Work or to provide any materials, equipment or supplies on behalf of the Seller (including any Person at any tier with whom any Subcontractor has further subcontracted any part of the Work).

"Tax" means any federal, state, local or foreign taxes, and other assessments of a similar nature, including any interest, penalties or additions attributable thereto.

"Term" means the period commencing on the Effective Date as defined in this Agreement and, unless terminated earlier as provided in the Agreement, continuing through termination of all Statements of Work.

"Utility Portal" means the web-based display of the ACAP information and provides the means for Purchaser to request dispatch of Available ACAP.

"WACC" means Purchaser's weighted average cost of capital in the applicable jurisdiction corresponding to the applicable Statement of Work.

"Work" has the meaning set forth in Section 1.1.

1. SELLER'S OBLIGATIONS

1.1. Supply, Installation, Commissioning and Operation

The Seller shall have sole responsibility, all at Seller's sole cost and expense, for (i) the development, construction, and maintenance of Sites that have DERs installed, including all necessary easements, design and coordination for deployment in accordance with this Agreement and the applicable Statement of Work, (ii) entering into any required agreements that enable such DERs for aggregation and dispatch by Purchaser in accordance with this Agreement and any Statement of Work, (iii) procuring, owning, and installing all DERs in all Sites in accordance with this Agreement and any Statement of Work, (iv) creating and maintaining secure communication access to all Sites, (v) operating and maintaining all Sites and associated DERs pursuant to this Agreement to deliver Available ACAP for Purchaser, (vi) managing Customer and DER information in the DER Registry, (vii) providing SRECs to Purchaser; and (viii) providing the irrevocable option for Purchaser to purchase the DER as provided in Section 1.9. The foregoing will be collectively referred to as the "Work."

1.2. Standard of Performance

The Seller shall perform the Work in accordance with the terms of this Agreement and each Statement of Work.

1.3. Permitting

The Seller will obtain all Permits necessary for the performance of the Work related to each Site, including all necessary local building and construction Permits for the Work, at Seller's sole cost and expense. Purchaser will reasonably support Seller in connection with its permitting efforts.

1.4. Subcontractors

The Purchaser acknowledges and agrees that the Seller intends to have all, or portions, of the Work performed by Subcontractors. No contractual relationship will exist between the Purchaser and any of Seller's Subcontractors with respect to the Work except in those circumstances where Purchaser may use the same Subcontractor(s) as Seller for the purpose of installing monitoring or communications equipment on Seller's property. Notwithstanding the foregoing, the Seller shall, at all times, be solely responsible for (i) completion of the Work and any other of the Seller's obligations hereunder, (ii) the acts, omissions, or defaults of the Subcontractors and their agents, representatives, and employees, and (iii) the engagement, management, and payment of the Subcontractors. Nothing contained herein will obligate the Purchaser to pay any Subcontractor, and the Seller shall be solely responsible for paying each Subcontractor to whom any amount is due from the Seller in connection with the Work.

1.5. Access and Inspection

Upon reasonable notice to the Seller, the Purchaser and its Representatives shall have the right during the performance of the Work to inspect the Work, subject to reasonable safety precautions and Customer requirements. Seller reserves the right to request a rescheduling or denial of inspection requests that would unreasonably interfere or delay the completion of the Work and the Seller's performance of its other obligations under this Agreement.

1.6. Seller's Representative

The Seller shall designate a representative, and the Seller's Representative shall have authority to administer this Agreement on behalf of the Seller, to agree upon procedures for coordinating the Seller's efforts with those of the Purchaser, and to furnish information, when appropriate, to the Purchaser. Notwithstanding anything herein to the contrary, the Seller's Representative shall have no authority to amend, waive, alter, modify, or delete any of the provisions of this Agreement. Except for any purported amendment, waiver, alteration, modification or deletion of this Agreement, any notice, approval, objection, assurance, certification, acknowledgement or similar action under this Agreement given or received in writing by the Seller's Representative shall be effective as if given or received by the Seller. The Seller may designate additional or replacement Seller's Representatives, subject to the Purchaser's consent, not to be unreasonably withheld, by giving notice thereof to the Purchaser and providing an amendment to Exhibit A reflecting such change. Notwithstanding the foregoing, if the Seller's Representative ceases to be employed by the Seller for any reason, then the Seller shall have no further obligation to make such individual available pursuant to this Agreement, so long as Seller has designated another Seller's Representative; provided, however, that nothing in this sentence is intended to restrict either Party's rights in connection with any dispute between the Parties.

1.7. Financial Assurances

In connection with any Statement of Work, Seller shall establish, fund, and maintain security in favor of Purchaser, as more fully defined in each Statement of Work, and shall be available to Purchaser to (i) pay any amount due Purchaser pursuant to this Agreement, including under any Statement of Work, and (ii) cover damages, including Claims and Losses related to Seller performance or non-performance under this Agreement (the "Security Fund").

(i) No later than five (5) Business Days prior to the first scheduled deployment of ACAP for the applicable Statement of Work, Seller shall establish the Security Fund at the level set forth in the Statement of Work, which shall remain in place for the Statement of Work Term. Unless otherwise provided in any Statement of Work, and subject to any cap set forth in any Statement of Work, Seller shall replenish the Security Fund within five (5) Business Days after any draw on the Security Fund by Purchaser.

(ii) The Security Fund shall be established and maintained at Seller's sole cost and expense, and shall be in a form provided in (a), (b), or (c) below or such other form of security acceptable to Purchaser in its sole discretion and documented in each Statement of Work.

(a) The Security Fund may be established through an irrevocable standby letter of credit in favor of Purchaser from a United States-based commercial bank or a U.S. branch of a foreign bank with at least Ten Billion Dollars ($10,000,000,000) in assets and an unsecured bond rating (not enhanced by third-party support) equivalent to A- or better as determined by Standard & Poor's and a Credit Rating of A3 or better as determined by Moody's, or, if either one or both are not available, equivalent ratings from alternate rating sources acceptable to Purchaser (the "Letter of Credit"). The Letter of Credit must be in a form reasonably acceptable to Purchaser and shall include a provision for at least thirty (30) days advance notice to Purchaser of any expiration or earlier termination of the Letter of Credit. The Letter of Credit must be issued for a minimum term of three hundred and sixty-five (365) days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty-five (365) days or more (or, if shorter, the remainder of the Term) no later than thirty (30) days prior to each expiration date of the Letter of Credit. If the Letter of Credit is not renewed or extended as required herein, Purchaser shall have the right to draw immediately upon the Letter of Credit.

(b) The Security Fund may be established through provision of a guaranty in favor of Purchaser substantially in the form of Exhibit E (a "Seller Guaranty") issued by a Person that (i) has and maintains a Credit Rating equal to or better than Investment Grade, or (ii) is otherwise acceptable to Purchaser in its sole discretion.

(c) The Security Fund may be established through provision of a surety bond issued by an insurer approved by Purchaser and in a form reasonably acceptable to Purchaser.

(iii) In the event that the Security Fund ever fails to comply with the requirements of this Section, or Purchaser determines in a commercially reasonable manner that an event has occurred or circumstances have developed that threaten to cause the Security Fund to fail to comply with the requirements of this Section, Seller shall be required to replace the Security Fund with security in compliance with Section within five (5) Business Days following notice thereof from Purchaser.

1.8. Liens

The Seller shall not directly or indirectly create, incur, assume or suffer to be created by it or any of its Subcontractors any Lien on any Site, or any part of, or interest in, any Site, without Purchaser's prior written consent. If such a Lien is created, the Seller shall promptly pay or discharge, and discharge of record, any such Lien for labor, materials, supplies or other charges which, if unpaid, might be or become a Lien upon the Site, or any component thereof. In the event any Subcontractor files a Lien against a Site, or any component thereof, the Seller shall, within sixty (60) days of the date of filing thereof, either (i) pay or discharge and have such Lien removed, or (ii) obtain bonds in accordance with Applicable Laws from a reputable surety company sufficient to remove or discharge such Lien. The Seller shall notify the Purchaser of the assertion of any Lien against any Site or any part thereof promptly upon learning of such Lien. Upon the failure of the Seller promptly to pay, discharge or bond over any Lien as required hereby within sixty (60) days of written notice of the existence thereof from the Purchaser, the Purchaser may, but shall not be obligated to, pay, discharge or obtain a bond or security for such Lien and, upon such payment, discharge or posting of security therefor, shall be entitled to promptly recover from the Seller the amount thereof together with all reasonable and documented expenses incurred by the Purchaser in connection with such payment or discharge, or set-off all such amounts against any sums owed by the Purchaser to the Seller.

1.9. Purchase Option

The Seller provides Purchaser the option, exercisable at Purchaser's sole discretion and at any time during the Term, to purchase any DERs associated with any Statement of Work, including associated equipment, software, licenses, materials, appropriate land rights, and agreements of whatever nature, in whole or in part, that are necessary for Purchaser to operate and maintain the DERs, at a price as determined consistent with the applicable provisions of Exhibit K. In the event Purchaser exercises a purchase option under this Section 1.9, the Parties shall negotiate and execute a purchase and sale agreement, which shall include commercially reasonable terms reflective of an arms-length transaction not among affiliated entities. The purchase and sale agreement shall include Seller's grant of a perpetual, irrevocable, and royalty-free license to Purchaser for use of the DERA Platform.

2. PURCHASER'S OBLIGATIONS

2.1. Purchase

The Contract Capacity is defined in the ACAP Pricing Table included in each Statement of Work. The Purchaser shall purchase from the Seller the Contract Capacity Deployed according to ACAP deployed in Commissioned and Accepted Sites.

2.2. Purchaser Assistance and Support

To the extent consistent with Applicable Law and prudent utility practice, and except as otherwise provided or as may be expanded in any Statement of Work, Purchaser agrees to provide the following assistance and support to Seller; provided that Seller shall have no claim against Purchaser and Purchaser shall have no liability to Seller related to an alleged failure by Purchaser to provide assistance and support pursuant to this Section 2.2:

(i) engage in a commercially reasonable manner with Seller to provide cooperation and organization and operational details to Seller as Seller deems reasonably necessary to satisfy its obligations under this Agreement and any Statement of Work, as documented in a kick-off process document approved by Seller, an example of which is set forth in Exhibit N, and as may be updated with agreement of both Seller and Purchaser; and

(ii) provide Seller with access to documents and resources that Seller reasonably demonstrates to Purchaser are necessary for the performance of Seller's obligations under this Agreement to the extent identified in a kick-off process document as contemplated in Section 2.2(i); and

(iii) engage in a commercially reasonable manner with Seller to encourage programs that support the subject matter of this Agreement; and

(iv) in connection with and as detailed in any Statement of Work, engage in a commercially reasonable manner with Seller to (A) explore and negotiate mutually acceptable fiber-sharing arrangements, subject to technical feasibility, regulatory compliance, and agreement on cost-sharing; (B) accommodate Seller's installation of fiber within designated communities and along the distribution grid to the nearest electric substation, provided that maintenance responsibilities and ownership are clearly defined; and (C) evaluate opportunities for connectivity solutions from substations to telecommunication central facilities, contingent upon available capacity, security and legal requirements, and mutually agreed demarcation points;

(v) cooperate and provide commercially reasonable support to Seller in establishing a mutually acceptable process for SREC certification and delivery of SRECs to Purchaser;

(vi) cooperate and provide commercially reasonable support to Seller in Seller's efforts to implement the DER Registry to manage all Customer and DER information; and

(vii) cooperate and provide commercially reasonable support to Seller in Seller's efforts to obtain interconnection agreements for Sites.

2.3. Purchaser's Representative

The Purchaser shall designate a Purchaser's Representative who shall have authority to administer this Agreement on behalf of the Purchaser, to agree upon procedures for coordinating the Purchaser's efforts with those of the Seller, and to furnish information, when appropriate, to the Seller. Notwithstanding anything herein to the contrary, the Purchaser's Representative shall have no authority to amend, waive, alter, modify, or delete any of the provisions of this Agreement. Except for any purported amendment, waiver, alteration, modification or deletion of this Agreement, any notice, approval, objection, assurance, certification, acknowledgment or similar action under this Agreement given or received in writing by the Purchaser's Representative shall be effective as if given or received by the Purchaser. The Purchaser may designate additional or replacement Purchaser's Representatives, subject to the Seller's consent, not to be unreasonably withheld, by giving notice thereof to the Seller and providing an amendment to Exhibit A reflecting such change. Notwithstanding the foregoing, if the Purchaser's Representative ceases to be employed by the Purchaser for any reason, then the Purchaser shall have no further obligation to make such individual available pursuant to this Agreement, so long as Purchaser has designated another Purchaser's Representative; provided, however, that nothing in this sentence is intended to restrict either Party's rights in connection with any dispute between the Parties.

3. PURCHASE PRICE, PAYMENT, AND PERFORMANCE

3.1. Purchase Price

With respect to each Statement of Work, the purchase price (the ***"Purchase Price"***) shall be equal to the Contract Capacity Deployed multiplied by the Monthly Contract Capacity Price, as defined in the ACAP Pricing Table in a Statement of Work, and unless otherwise set forth in a Statement of Work, shall be paid monthly. Purchaser shall pay Seller the Purchase Price, which shall be outlined in a Monthly ACAP Invoice.

3.2. Monthly Invoices and Monthly Progress Reports

The Seller shall submit to the Purchaser monthly invoices that include:

(1) A Monthly ACAP Invoice setting forth the Purchase Price, the newly commissioned ACAP, the cumulative ACAP deployed in prior periods, and the amount of any applicable Purchaser Taxes for which Seller is entitled to reimbursement; and

(2) A Monthly Progress Report. Each Monthly Progress Report shall contain (A) a brief description of the Work performed during the Payment Period, including the number of newly Commissioned Sites and the number of kW of ACAP that such Commissioned Sites represent, (B) a brief description of any materially adverse circumstances that the Seller encountered during its performance of the Work and (C) a list of all items subject to Purchaser Taxes that the Seller was required to pay during the Payment Period; and

(3) A Monthly SREC Report. Each Monthly SREC Report shall contain the necessary information for solar production for cumulative solar ACAP deployed and the SRECs that have been created for delivery to Purchaser. If any costs are incurred by Seller to certify the SRECs for Purchaser, these costs will be invoiced with the SREC report.

The Monthly ACAP Invoice will be due within thirty (30) days of the date of the invoice. If any additional invoices are required by Seller to recover authorized payments from Purchaser, the payment terms shall be thirty (30) days from the date of invoice unless otherwise set forth in a Statement of Work.

An example calculation for the Monthly ACAP Invoice can be found in Exhibit L.

To the extent a Production Reservation Payment is agreed to by the Parties and set forth in a Statement of Work, such Statement of Work shall include language indicating (i) when payment of the Production Reservation Payment is owed by Purchaser to Seller, and (ii) under what circumstances, if any, the Production Reservation Payment shall be refundable to Purchaser.

3.3. Performance Guarantees

If Seller fails to satisfy any Performance Guarantee as set forth in any Statement of

Work, then Seller shall be obligated to take such appropriate corrective actions, and Seller shall owe Purchaser the Performance Guarantee Payment as calculated and set forth in the applicable Statement of Work. The dispute resolution provisions of Section 19 of this Agreement shall apply with respect to any dispute between the Parties with respect to the calculation of a Performance Guarantee Payment. Each Party acknowledges and agrees that the actual damages Purchaser would incur due to Seller's failure to satisfy any Performance Guarantee are difficult to assess and impractical or impossible to predict with certainty and, therefore, agree that the Performance Guarantee Payment agreed to by the Parties in a Statement of Work is a fair assessment of the damages and shall not be deemed a penalty.

For each Performance Guarantee set forth in a Statement of Work, the Statement of Work will include applicable testing procedures, agreed by the Parties, detailing the frequency of performance tests and the specific technical details for performing such tests and evaluating results.

4. COMMISSIONING

4.1. Commissioning

Once a Customer Site or DER Site has been installed in accordance with the terms of this Agreement and the applicable Statement of Work, and is capable of being presented for dispatch in the Utility Portal, the Seller shall provide Purchaser with a Commissioning Notice, by electronic mail, or other mutually agreed upon method, to Purchaser's Representative, notifying them that such Customer Site or DER Site and associated ACAP is ready for their acceptance. The Purchaser may provide a Commissioning Dispute Notice if the Purchaser wants to verify the ACAP value on the Commissioning Certificate or otherwise disputes any information included within the Commissioning Notice. Unless the Purchaser provides the Seller with a Commissioning Dispute Notice within the Commissioning Acceptance Period, the Customer Site or DER Site shall be deemed to be a Commissioned and Accepted Site on the Commissioning Date. If the Purchaser provides the Seller with a Commissioning Dispute Notice, then the Seller's Representative and the Purchaser's Representative shall first attempt to resolve the Dispute described therein by joint inspection and testing of the applicable Site or any other means or methods acceptable to the Party within five (5) Business Days following the Commissioning Dispute Notice. The Parties shall extend that time period if necessary for good cause shown. If the Parties are unable to resolve a Dispute in accordance with this Section 4.1, then such Dispute shall be resolved in accordance with the dispute resolution provisions set forth in Article 19.

4.2. Verification.

Purchaser may visit any Site to verify the Site is operational in accordance with the terms in Section 1.5 of this Agreement.

5. TITLE AND RISK OF LOSS

5.1. Title to DERs

Title to all equipment deployed at all Sites shall remain with Seller.

5.2. Risk of Loss

Notwithstanding anything to the contrary in this Agreement, the Seller shall bear the risk of loss and damage with respect to all equipment and components deployed at all Sites, including DERs, wherever located.

6. DER INTERCONNECTION

6.1. Capacity from DERs

Seller will enter into any necessary Interconnection Agreements with Purchaser to provide ACAP from Customer Sites and DER Sites pursuant to this Agreement, and the Seller will integrate the DERs and their ACAP into the Purchaser's utility system (grid) through the installation of an ACAP Agent and other necessary equipment as required by the Interconnection Agreements, this Agreement, and the applicable Statement of Work, provided that Seller's integration actions under this Agreement and any Statement of Work, including installation of an ACAP Agent and any other necessary equipment, shall comply with all Applicable Laws and all applicable tariffs, practices, rules, procedures and directives of Purchaser including those implemented for the purpose of ensuring security and resilience of Purchaser's utility system, subject to Section 8.2.

6.2. Interconnection of Sites

Consistent with prudent utility practice and Applicable Law, Purchaser shall support Seller in identifying templates and supporting the process for Seller's preparation of required Interconnection Agreements for the Sites, including taking all reasonable efforts to timely complete necessary pre-interconnection studies for the proposed Customer Sites and DER Sites contemplated under any Statement of Work. Seller shall be responsible for preparing all necessary documentation for an application or request for an Interconnection Agreement.

7. OPERATION

7.1. Capacity Management

Management of the ACAP includes maintaining communications to the Sites to enable Dispatch Events; maintaining the Utility Portal and the Customer Portals to manage the ACAP; and management of all Dispatch Requests, Dispatch Events and monthly reporting on availability and performance. Seller shall perform the above (and operate Customer Sites, DER Sites, and all associated DERs) in good faith, in a workman like manner, and with that level of care and skill ordinarily exercised by members of Seller's profession.

7.2. Maintenance of Customer Sites and DER Sites

Seller shall maintain the Customer Sites and DER Sites throughout the Statement of Work Term, including replacement of a Customer Site or a DER Site or installing and commissioning at a new Site if the Seller determines it is necessary. Seller shall maintain the Contract Capacity throughout the Statement of Work Term. Seller shall perform the above (and maintain Customer Sites, DER Sites, and all associated DERs) in good faith, in a workman like manner, and with that level of care and skill ordinarily exercised by members of Seller's profession.

8. DISPATCH EVENTS

8.1. Dispatch of the ACAP

Dispatch of the ACAP may be made as follows:

(a) Purchaser shall have the right to dispatch Available Capacity via the Utility Portal, which will indicate the forecast of Available Capacity. Purchaser may schedule a Custom Dispatch Request for Dispatch Events up to twenty-four (24) hours in advance. Custom Dispatch Requests for Dispatch Events may be cancelled up to fifteen (15) minutes before the initiation of a Dispatch Event. Custom Dispatch Requests for Dispatch Events cancelled within the fifteen (15) minute window will be delivered for no less than fifteen (15) minutes.

(b) Standard Dispatch – The Purchaser and Seller shall mutually agree upon a Standard Dispatch that will occur daily unless Purchaser creates a Custom Dispatch Request for any given day. The Parties may mutually agree to amend or alter the Standard Dispatch throughout the Term.

(c) Purchaser and Seller may agree to an additional secure process for dispatching a Dispatch Event outside of the Utility Portal (i.e., from existing Purchaser systems).

8.2. Security and Errors

Seller shall ensure that all of Seller's actions related to dispatch of the ACAP comply with all Applicable Laws, Purchaser practices, rules, procedures and directives implemented for the purpose of ensuring security and resilience of Purchaser's utility system; provided, however, that to the extent Purchaser issues any directive (including any change in procedures or practices) unrelated to a change in Applicable Law and such directive would result in Seller incurring additional costs to satisfy its obligations under this Agreement, including this Section 8.2, Seller shall be entitled to reimbursement by Purchaser for such reasonable additional costs provided Seller (i) informs Purchaser in advance that such anticipated additional costs will be incurred, (ii) explains in adequate detail what actions are required that result in such anticipated costs, and (iii) provides an estimate of such costs to be incurred. To be eligible for reimbursement by Purchaser pursuant to the preceding sentence, Purchaser must agree in writing to reimbursement of such costs. In the event Purchaser does not agree in writing to reimburse Purchaser, Seller shall not be obligated to comply with any Purchaser directive that is not associated with a change in Applicable Law.

Unless expressly stated otherwise in any Statement of Work, Seller's scope of work under each Statement of Work shall include the installation and maintenance of a direct electrical connection between Purchaser's retail service grid and each Customer meter associated with a Customer Site, as illustrated in Exhibit M, so that Purchaser maintains the ability to directly serve its Customers consistent with prudent utility practice in the event of an emergency or failure of Seller equipment, including the DERA Platform. If requested by Purchaser, the Parties will memorialize any procedures necessary to effectuate this provision as an attachment or exhibit to a Statement of Work.

Seller shall not be liable to Purchaser for any costs, penalties or liabilities associated with Purchaser not following the requirements set forth by Seller for accessing the Utility Portal.

9. TAXES

9.1. Seller Taxes

The Purchase Price shall include Seller Taxes. All Seller Taxes shall be for the account of, and shall be paid directly by, the Seller.

9.2. Purchaser Taxes

The Purchase Price excludes Purchaser Taxes. Purchaser is responsible for and will be invoiced by Seller for any import duties, tariffs, taxes and fees and value-added tax, sales tax, or similar Taxes and fees unless Purchaser provides documentation showing they are not subject to these taxes. All Purchaser Taxes shall be for the account of, and shall be paid directly by, the Purchaser. Notwithstanding the foregoing, if the Seller is obligated under Applicable Laws to collect and/or pay any Purchaser Taxes, it shall invoice the Purchaser for such payments and the Purchaser shall remit such amounts to the Seller within thirty (30) days of invoice; provided, that if the Purchaser (i) reasonably believes that it is exempt from any such Purchaser Taxes, and (ii) the Purchaser provides to the Seller adequate documentation of exemption in accordance with the applicable taxing authority regulations as promptly as practicable, but in any event within ten (10) Business Days after receipt of such invoice, then the Purchaser shall not be obligated to honor such invoice or remit such payment. The Seller covenants to forward promptly to the Purchaser any notice, bill or other statement received by the Seller concerning any Purchaser Taxes. The Purchaser may pay any Purchaser Taxes in installments if so payable under Applicable Laws, whether or not interest accrues on the unpaid balance. The Purchaser may contest in good faith the validity, existence or applicability of any Purchaser Tax if (x) during such contest the execution or enforcement of such Purchaser Tax is suspended, and (y) such contest is not reasonably expected to result in the exposure of the Seller to any criminal liability for failure to comply therewith. In the event that any Purchaser Tax is imposed upon the Seller, and the Purchaser pays the same as required herein, the Purchaser shall be subrogated to the

Seller's right, if any, to contest the validity of such Purchaser Tax. The Seller agrees to cooperate with the Purchaser in the prosecution of any such contest.

10. WARRANTIES

Seller is responsible to deploy and maintain Contract Capacity and is the owner of all equipment and will manage all associated equipment warranties accordingly to meet delivery of ACAP. Seller warrants that all services, deliverables, and equipment that Seller provides under this Agreement shall conform to descriptions, specifications, and standards included in or referenced in the Agreement and be performed in good faith, in a workman like manner, and with that level of care and skill ordinarily exercised by members of Seller's profession.

11. REFURBISH/REPLACEMENT of DERs

For the duration of a Statement of Work Term, as defined in the ACAP Pricing Table, Seller will, at its own cost and expense, refurbish or replace any Customer Site or any DER Site required to continue to meet ACAP required performance.

12. PURCHASER APPROVALS

The Parties acknowledge that certain reviews, acceptances, waivers, exceptions, permits, or approvals may be sought or required by Purchaser as a condition to entering into any Statement of Work under this Agreement (collectively, "Approvals"). To the extent any Approval will be required by Purchaser in connection with any Statement of Work, such Approval will be identified in the applicable Statement of Work.

Purchaser makes no warranties or representations as to whether any required Approval will, or is likely to, be granted. In connection with any Approval, Purchaser shall take the lead role in preparing each submittal in support of each Approval and in any processes required to obtain Approval and shall use reasonable efforts in pursuit of each Approval. Seller shall make best efforts to support Purchaser's efforts. Purchaser shall not have any obligation to take any action for which an Approval is necessary in the absence of receiving such Approval in a final, unappealable form and without conditions, except such conditions that are acceptable to Purchaser in its sole discretion. If a submittal for a required Approval is denied, or is granted in a form that requires either a modification to the terms of this Agreement or applicable Statement of Work or a substantial increase in Purchaser's cost to perform pursuant to this Agreement or the applicable Statement of Work, then Purchaser shall work with Seller to identify potential reasonable modifications to the submittal and/or this Agreement or Statement of Work that could reasonably be anticipated to result in approval and: (a) if mutually agreed, incorporate such modifications and resubmit; or (b) at either Party's election, terminate this Agreement or the applicable Statement of Work without penalty or other liability of either Party. If the resubmittal is made and is unsuccessful, then either Party may terminate this Agreement or applicable Statement of Work at its sole discretion without penalty or other liability to either Party, or the Parties can, by mutual agreement, further modify and resubmit.

Within ten (10) days of receipt of all required Approvals set forth in a Statement of Work, Purchaser shall provide notice of same to Seller. At Seller's request, Purchaser shall update Seller as to the status of any outstanding requests for Approvals.

13. INDEMNIFICATION

Seller shall indemnify and hold harmless Purchaser, its Representatives, owners, directors, officers, employees, contractors (and each of their respective subcontractors) for, against, and from any and all Claims, liabilities, damages, Losses, costs, and expenses of any kind or nature (including reasonable and documented attorneys' fees) for personal injury (including mental anguish) to or death of any person or for destruction or loss of or damage to the property of any third person or entity (including any Customer) in each instance to the extent determined (by a court having competent jurisdiction over or upon agreement of the Parties) to be proportionately attributable to (i) the negligence (including strict liability in tort), gross negligence, or willful misconduct of Seller, its owners, directors, officers, employees, agents, or Subcontractors arising from, in connection with, or in any way related to the Agreement or the Work or applicable Statement of Work, including the performance or nonperformance thereof, or (ii) any breach of the Agreement or any Statement of Work by Seller, except, with respect to (i) above, to the extent such Claims, liabilities, damages, Losses, costs, and expenses are caused solely by the gross negligence or willful misconduct of Purchaser.

The Seller shall also indemnify, defend and hold the Purchaser, including its Representatives, harmless from and against third party Claims, damages, Losses, liabilities, costs, and expenses (including reasonable and documented legal fees) arising from, or related to, an infringement of Intellectual Property which occurs as a result of Purchaser's use of any service, product, software, equipment, component or other items provided by or used by Seller and its Representatives under this Agreement. In the event that Intellectual Property provided by or used by Seller under this Agreement is claimed to be, held to constitute an infringement, or its use by the Purchaser is enjoined ("Infringing Intellectual Property"), the Seller will, at its option and its own expense, either: (x) procure for the Purchaser the right to continue using the Infringing Intellectual Property; (y) replace such Infringing Intellectual Property with substantially equivalent non-infringing Intellectual Property; or (z) modify such Infringing Intellectual Property so it becomes non-infringing.

Purchaser shall notify the Seller in writing promptly following the Purchaser's receipt of notice of any Claims, including of infringement of Intellectual Property, occurring in connection with the Seller's performance or nonperformance under the Agreement or with respect to the Work or applicable Statement of Work, and shall, upon request of Seller, promptly provide to the Seller all relevant information in the Purchaser's possession or control requested by Seller in respect of such Claim.

The Seller shall timely notify the Purchaser in writing of any Claims which the Seller may receive alleging any Claims, including infringement of Intellectual Property, which affect the

Seller's performance of the Work under this Agreement, including, but not limited to, the Purchaser's use of the Commissioned Site or the Purchaser's use of the Seller Intellectual Property. Notwithstanding anything to the contrary herein, the Seller shall have no liability hereunder to the extent that any alleged infringement or Claim of infringement is based upon: (1) any Seller Intellectual Property or Commissioned and Accepted Site being modified by Purchaser or its Representatives to the extent that such Claim relates to such modification; or (2) any Seller Intellectual Property or Commissioned and Accepted Sites being used by the Purchaser other than as permitted under this Agreement and the license granted by Seller.

14. TERMINATION AND SUSPENSION

14.1. Termination for Cause by the Purchaser

(a) The Purchaser shall have the right, but not the obligation, to terminate this Agreement or any Statement of Work hereunder for cause if:

(1) The Seller voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors, or insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against the Seller and such proceedings are not dismissed or stayed within ninety (90) days;

(2) The Seller fails to perform any material obligation under this Agreement or breaches a material provision of this Agreement or any Statement of Work and such failure is not cured within ten (10) Business Days after receipt of notice thereof from the Purchaser, but if such default cannot be cured within such ten (10) Business Day period despite Seller's reasonable diligence, the Seller shall have an additional period, not to exceed thirty (30) days, only if (i) Seller takes all commercially reasonable measures to cure such breach within the initial ten (10) Business Days following notice from Purchaser and (ii) Seller acts with reasonable diligence or Seller submits a corrective action plan, acceptable to Purchaser in its reasonable discretion, within the initial ten (10) Business Days (the "Cure Period"); or

(3) Any representation or warranty made by the Seller in Section 17.1 shall contain an untrue or misleading statement of material fact as of the date made and Seller fails to comply with such representation or warranty within thirty (30) days after a demand by Purchaser to do so.

(b) The Purchaser shall have the right, but not the obligation, to terminate any Statement of Work for cause if Seller underperforms any stated performance obligation in the applicable Statement of Work, as such underperformance is defined in such Statement of Work.

14.2. Remedy in the Event of Purchaser Termination for Cause

If the Purchaser terminates this Agreement or any Statement of Work as provided in Section 14.1, it will do so without penalty or further obligation to Seller except as to costs and balances incurred prior to the effective date of such termination.

If Purchaser does not exercise its purchase rights under Sections 1.9 and 14.6, Seller shall retain its ownership and other rights in the DERs and related equipment and Sites and retains its right to convert any such DERs to “behind-the-meter” generation for applicable Customers, subject to Applicable Law and agreement by the Customer.

14.3. Termination for Cause by the Seller

The Seller shall have the right, but not the obligation, to terminate this Agreement for cause if:

(a) the Purchaser voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors, or insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against the Purchaser and such proceedings are not dismissed or stayed within ninety (90) days;

(b) the Purchaser fails to make any undisputed payment to the Seller within one-hundred twenty (120) days after the Seller’s notice to the Purchaser of the Purchaser’s failure to make such payment when due pursuant to the terms of this Agreement or the applicable Statement of Work; or

(c) Purchaser breaches a material provision of this Agreement or Statement of Work and such failure is not cured within ten (10) Business Days after receipt of notice thereof from the Seller, but if such default cannot be cured within such ten (10) Business Day period despite Purchaser’s reasonable diligence, the Purchaser shall have an additional period, not to exceed thirty (30) days, only if (i) it takes all commercially reasonable measures to cure such breach within the initial ten (10) Business Days following notice from Seller and (ii) Purchaser acts with reasonable diligence or Purchaser submits a corrective action plan, acceptable to Seller in its sole discretion, within the initial ten (10) Business Days.

14.4. Remedy in the Event of Seller Termination

If the Seller terminates this Agreement for cause as provided in Section 14.3, then the Seller will be compensated by the Purchaser per the applicable provisions of Exhibit K.

14.5. Suspension by the Seller

In addition to its termination and other rights hereunder, the Seller shall have the right to suspend performance of the Work under any Statement of Work following the failure of the

Purchaser to make any undisputed payment pursuant to the Statement of Work within the period set forth in Section 14.3(b). Except for any documented actual out of pocket costs and expenses, if any, reasonably incurred by the Seller in accordance with any such suspension, which shall be payable by the Purchaser within thirty (30) following receipt of Seller's invoice and supporting documentation, Purchaser shall not owe any payments to Seller during the period of any suspension. The dates for performance of Seller's obligations under the applicable Statement of Work, shall be extended for a period of time equal to the period during which performance is suspended pursuant to this Section 14.5.

14.6. Step-In Rights; Assumption of Installation Subcontracts

If any termination event in Section 14.1 shall have occurred, then the Purchaser shall have the right, but not the obligation, and without waiving any rights or remedies that the Purchaser otherwise has hereunder or by operation of law, to terminate this Agreement or the applicable Statement of Work, purchase the DERs and/or perform or cause to be performed the Work necessary to take over the Sites and assume Seller's responsibilities under this Agreement or applicable Statement of Work. Any DERs or other equipment, software, licenses, materials, appropriate land rights, and agreements purchased by Purchaser pursuant to Purchaser exercising the rights provided in this Section shall be owned by Purchaser per the applicable provisions of Exhibit K of this Agreement. The Purchaser's exercise of its rights under this Section 14.6 shall not relieve the Seller of any surviving obligations under this Agreement, including continuing obligations under any Statements of Work that remain in effect.

14.7. Force Majeure Events

(a) *General.* If either Party is unable to timely perform any of its obligations under this Agreement in whole or in part due to a Force Majeure Event, such Party shall be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided that the affected Party shall have used commercially reasonable efforts to mitigate the impact of the relevant Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practicable thereafter

(b) *Procedures; notice.* The Party affected by a Force Majeure Event shall notify the other Party as soon as reasonably practicable after it has knowledge that a Force Majeure Event has occurred. Such notice shall be given in writing, with reasonable supporting details thereof, including details of the affected assets, the expected duration of the Force Majeure Event and the steps undertaken or to be undertaken to mitigate, remedy or rectify the Force Majeure Event (in each case, to the extent known).

(c) *Effect of Force Majeure Event.* During the continuance of a Force Majeure Event that has been notified in accordance with Section 14.7(b), the affected Party shall be excused from performing those obligations directly affected by such Force Majeure Event; provided that the occurrence or continuation of any Force Majeure Event shall not excuse a Party from performing any payment obligations contemplated under this Agreement (except as provided in Section 14.7(f) below). Where the Force Majeure Event frustrates or prevents compliance with an obligation to perform or deliver on, by or during a particular date or period of time, the affected Party shall be entitled to at least a day-by-day equitable adjustment to date or period of time, or such other equitable adjustments as may be mutually agreed by the Parties in writing.

(d) *Duty to mitigate.* The Party asserting a Force Majeure Event shall, at all times following the occurrence of a Force Majeure Event, use reasonable efforts to prevent, minimize and/or mitigate any adverse effect thereof.

(e) *Cessation.* A Party affected by a Force Majeure Event that has been notified in accordance with Section 14.7(b) shall, as soon as practicable after the relevant Force Majeure Event ceases or otherwise no longer prevents the affected Party from complying with its obligations under this Agreement, shall give notice of the cessation of the relevant Force Majeure Event and shall thereafter continue to perform its obligations on the terms existing immediately prior to the occurrence of the Force Majeure Event, subject to such adjustments as a consequence thereof to which the affected Party was entitled under this Section 14.7 or otherwise under this Agreement.

(f) *Purchase Price during Force Majeure*. During the period of any Force Majeure Event affecting Seller under any Statement of Work, the Purchase Price under such Statement of Work shall be reduced in proportion and to the extent that such Force Majeure Event reduces the ACAP that would otherwise be available with respect to the Contract Capacity Deployed consistent with, to the extent applicable, the Performance Guarantees set forth in such Statement of Work. Notwithstanding the foregoing, in the event Purchaser exercises its purchase option or Seller terminates for cause, for purposes of valuation pursuant to Exhibit K, any reduction to the Purchase Price pursuant to this Section 14.7(f) shall not apply unless Seller fails to cure the underlying non-performance in accordance with the applicable cure periods set forth in Section 14.1.

(g) *Termination for Extended Force Majeure*. Either Party shall have the right, but not the obligation, to terminate any Statement of Work if a Force Majeure Event has occurred and continued for a period of twelve (12) consecutive months; provided, however, that prior to expiry of such period, if Seller provides written evidence reasonably acceptable to the Purchaser that the relevant Force Majeure Event is capable of cure within an additional six (6) month period, and that the Seller is diligently pursuing curative action in respect thereof, the Purchaser's right to terminate a Statement of Work under this clause (g) shall not arise until the expiration of the additional period set forth in Purchaser's notice above, such additional period not to exceed six (6) months from the date Purchaser delivers the notice. If either Party terminates a Statement of Work as provided in this clause (g), it will do so without penalty or further obligation to the other Party, except as to costs and balances incurred prior to the effective date of such termination.

14.8. Purchaser's Failure to Satisfy Obligations

If the Purchaser fails to satisfy any of its material obligations under this Agreement and such failure affects the Seller's ability to timely perform, fulfill or otherwise comply with its obligations under this Agreement, then provided such occurrence is not the result of the Seller's breach of this Agreement or a Force Majeure Event, in addition to any other remedies available to the Seller under this Agreement, the Seller shall be entitled to an equitable adjustment to the time to perform, fulfill or complete any of its obligations hereunder and the reasonable and documented costs associated with any such delay (which may include (without limitation), demobilization, storage, remobilization and similar costs).

14.9. Surviving Obligations

Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

15. LIMITATION OF LIABILITY

15.1. No Consequential Damages

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR TREBLE DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES REGARDLESS OF WHETHER THE RELEVANT CAUSE OF ACTION ARISES FROM STATUTE, IN TORT OR CONTRACT (except to the extent expressly provided herein or in any Statement of Work); *provided however,* that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for all such damages. Notwithstanding the foregoing, with respect to any liquidated damage provisions included in any Statement of Work, the Parties agree that such liquidated damages constitute a reasonable approximation of the harm to the non-breaching Party and are not a penalty or otherwise subject to the general restrictions in the first sentence of this Section 15.1.

15.2. Conditions on Assignment by the Parties

The Parties covenant and agree that, if either Party seeks to transfer or assign (to the extent permitted by Section 21.12 any portion of this Agreement) to any Person, the Party shall, as a condition to such transfer or assignment, cause such transferee to acknowledge and agree to the restrictions and limitations set forth in this Agreement, including those set forth in this Article 15.

16. INSURANCE

16.1. Coverages

Seller shall at its sole expense, procure and maintain, and shall cause its Subcontractors to procure and maintain, throughout the Term except as set forth in Article 16, the following types of insurance with the following, minimum limits, which may be adjusted in any individual Statement of Work:

16.1.1 Workers' compensation insurance in accordance with all jurisdictions where Seller has operations including where the Work is to be performed. If Seller is a non-subscriber to workers' compensation, evidence of insurance equivalent to workers' compensation must be provided.

16.1.2 Employer's liability in an amount not less than $1,000,000.

16.1.3 Business automobile insurance covering all owned, non-owned and hired autos in an amount not less than $1,000,000 per occurrence covering claims of bodily injury and property damage combined single limit each accident.

16.1.4 Commercial general liability insurance, including broad form contractual liability, covering claims of bodily injury and property damage in an amount not less than $1,000,000 per occurrence and $2,000,000 general aggregate.

16.1.5 Professional liability insurance and/or "errors and omissions" insurance in an amount not less than $1,000,000 per incident.

16.1.6 Commercial umbrella liability coverage with minimum limits of $5,000,000 per occurrence and $5,000,000 general aggregate.

16.1.7 To the extent permitted by law, Seller shall waive, and shall cause each of its insurers to waive, any and all rights of recovery, by subrogation or otherwise, against Purchaser and its Affiliates, officers, directors, employees, agents and assigns of any type. Each of Seller's insurance policies shall be primary to and non-contributory with any insurance or self-insurance of Purchaser.

16.1.8 The commercial general liability, commercial umbrella liability, and the business automobile shall include Purchaser as an additional insured. Such coverage shall also include blanket contractual coverage and contain no exclusion for explosion, collapse, or underground property damage (XCU coverage).

16.1.9 The insurance required by this Article 16 is in addition to and separate from any other obligations contained in the Agreement.

16.1.10 Products and/or completed operations coverage shall be maintained for a period of two (2) years after the completion of the Work. If any of the policies indicated above are placed on a "claims-made" basis, such coverage shall be maintained for a period of not less than two (2) years following the completion of the Work.

16.1.11 Any deductibles or retentions on any of the policies required herein shall be the sole responsibility of the Seller.

16.1.12 The above referenced limit requirements may be met by any combination of umbrella or excess and primary policies so long as the total limit of insurance requirement is met. The required coverages referred to herein shall in no way affect, nor are they intended as a limitation of, Seller's liability with respect to its performance of the Work.

16.1.13 Upon inception of the Agreement and prior to commencement of Work, Seller shall provide Purchaser with an acceptable certificate of insurance evidencing the insurance required under Article 16. Seller will not be permitted to bring its employees, materials or equipment onto any Customer Site or DER Site until Purchaser receives such evidence of insurance. Seller also must provide an updated certificate of insurance at any time during a Statement of Work Term upon Purchaser's request. Each policy of insurance referenced in this Article 16 shall be endorsed to provide Purchaser not less than thirty (30) days advance written notice of the expiration, termination, cancellation, or modification of such policy. If such insurance policies are subject to any exceptions to the terms specified herein, such exceptions shall be explained in full in such certificates. Purchaser may, at its discretion and with ninety (90) days' notice, require Seller to obtain insurance policies that are not subject to non-standard exceptions.

17. REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE PURCHASER

17.1. Representations and Warranties of the Seller

The Seller represents and warrants to the Purchaser as of the Effective Date and the execution date of each Statement of Work that:

(a) Existence and Powers. The Seller is a Texas limited liability company, validly existing and in good standing under the laws of the United States and the State of Texas, with full legal right, power and authority to enter into and to perform its obligations under this Agreement and the applicable Statement of Work.

(b) Due Authorization and Binding Obligation. This Agreement and the applicable Statement of Work has been duly authorized, executed and delivered by all necessary company action of the Seller and constitutes a legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other Applicable Laws affecting creditors' rights from time to time in effect.

(c) No Conflict. Neither the execution nor delivery by the Seller of this Agreement, nor the execution of any Statement of Work, nor the performance by the Seller of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Seller of the terms or conditions hereof, (i) conflicts with, violates or results in a breach of any Applicable Laws or (ii) conflicts with, violates or results in the breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the Seller is a party or by which the Seller or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(d) Intellectual Property. Seller's performance of the Work and the Purchaser's use thereof (including the Seller Intellectual Property) as contemplated by this Agreement and in each Statement of Work, do not and shall not infringe or violate any Intellectual Property of any Person.

17.2. Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Seller as of the Effective Date and the execution date of each Statement of Work that:

(a) Existence and Powers. The Purchaser is a Texas corporation with full legal right, power and authority to enter into and to perform its obligations under this Agreement and the applicable Statement of Work.

(b) Due Authorization and Binding Obligation. This Agreement and the applicable Statement of Work has been duly authorized, executed and delivered by all necessary action of the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other Applicable Laws affecting creditors' rights from time to time in effect.

(c) No Conflict. Neither the execution nor delivery by the Purchaser of this Agreement, nor the execution of any Statement of Work, nor the performance by the Purchaser of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Purchaser of the terms or conditions hereof, (i) conflicts with, violates or results in a breach of any Applicable Laws or (ii) conflicts with, violates or results in the breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the Purchaser is a party or by which the Purchaser or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

18. CONFIDENTIALITY

18.1. Confidentiality

Each Party agrees, and shall use reasonable efforts to cause its Representatives to agree, as a condition to receiving Confidential Information hereunder, to keep confidential, except as required by Applicable Laws, all Confidential Information using at least the same degree of care to protect the Confidential Information and prevent unauthorized disclose or access that it uses with its own Confidential Information of similar type and shall not disclose or permit the disclosure of such Confidential Information to others, allow others to access it, or use it in any way, commercially or otherwise, except in the administration of its interest in the transactions contemplated hereby and otherwise for the purposes set forth in, or in connection with the performance of, this Agreement. The provisions of this Article shall survive and shall continue to be binding upon the Parties for a period of three (3) years following the date of termination of this Agreement. Notwithstanding the foregoing, information shall not be considered confidential which (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party , (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered Confidential Information under this Agreement. Notwithstanding the foregoing, with respect to Confidential Information that constitutes a trade secret under Applicable Law or is otherwise required by any law, regulation, or order to remain confidential, such obligations will survive such expiration or termination until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of receiving Party or those persons to whom receiving Party disclosed such Confidential Information.

Provided that Confidential Information is not disclosed by or for the receiving party to a (i) J.P. Morgan Chase & Co. (together with its affiliates, "J.P. Morgan") business group other than J.P. Morgan Asset Management's Alternatives-Infrastructure Investments Group, no such other business group(s) shall be deemed to be a "Representative" for purposes of this Agreement, and (ii) fund, investment vehicle, or separate account that is sponsored, advised, and/or managed by J.P. Morgan Investment Management Inc. and/or its affiliates, no such fund, investment vehicle, or separate account shall be deemed to be a "Representative" for purposes of this Agreement.

18.2. Rights to Disclose

(a) Either Party may, without violating this Article 18, disclose Confidential Information to the following:

(i) to the extent such Persons are bound by a duty of confidentiality at least of even scope herewith, and only to the extent specifically related to the application or implementation of this Agreement or the course of Work, to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective co-owners, actual or prospective investors, actual or prospective lenders, actual or prospective underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries, Affiliates, or parent; and

(ii) to governmental officials and Persons involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement (including, in the case of Purchaser, cost recovery from a public utility commission); to governmental officials or the public as required by any Applicable Law, regulation, order, rule, ruling or other requirement of Applicable Laws, including without limitation oral questions, discovery requests, subpoenas, public utility commission proceedings, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to investors, and filing of financial reports. If a Party is requested or required, pursuant to any Applicable Law, regulation, order, rule, order, ruling or other requirement of Applicable Laws, discovery request, subpoena, public utility commission proceeding, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure. In the event that the Parties fail to obtain a protective order or similar protection, the Party receiving the demand or request for disclosure of Confidential Information shall furnish only that portion of the Confidential Information that is legally required to be furnished and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be afforded the Confidential Information so disclosed, including, in the case of a public utility commission proceeding, seeking a protective order in connection with the demand or request for disclosure.

(b) Notwithstanding anything to the contrary in this Agreement, at any time, Purchaser or any of its Representatives may provide copies, summaries and analyses of Confidential Information obtained under this Agreement to any regulatory, governmental, judicial or supervisory authority including, without limitation, to the staff of any such regulators and to any advisors to any such regulators and/or the staff thereof and/or during the course of regulatory or governmental approvals, applications exemptions, filings, or other matters pertaining to Purchaser's business, provided that Purchaser exercises commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such information, including, in the case of a public utility commission proceeding, seeking a protective order in connection with the demand or request for disclosure.

19. DISPUTE RESOLUTION

Any Dispute regarding the formation, applicability, construction, interpretation, performance, termination, validity or enforceability of any provision of this Agreement or whether any Person is in compliance with, or breach of, any provisions of this Agreement shall be resolved exclusively according to the procedures set forth in this Article 19.

19.1. Informal Resolution.

The Parties agree to attempt to settle any Dispute through consultation and negotiation in good faith and in a spirit of mutual co-operation. If a Dispute is not resolved, either Party may refer the matter to a designated senior officer of each Party. The senior officers of each Party shall be obliged to meet for this purpose within thirty (30) days of receipt of a referral under this subsection, and the respective senior officers of the Parties shall be fully briefed on the issue in advance of the meeting and shall attempt to resolve the Dispute. If possible, the senior officers will agree on a solution or, if they cannot resolve the dispute within ten (10) days, will agree to arbitration as provided below.

19.2. Arbitration.

(a) If a Dispute is not resolved as provided for in Section 19.1, then the Dispute shall be resolved by binding arbitration before the auspices of Judicial Arbitration and Mediation Services, Inc. ("JAMS") in accordance with JAMS rules in the County of El Paso, Texas, before a single arbitrator. Within ten (10) days after either Party has provided a notice of arbitration, the Parties shall agree on a single arbitrator, or, in the absence of such agreement, the arbitrator shall be appointed pursuant to the JAMS rules. The arbitrator shall not be a past or present employee or agent of, or consultant or counsel to, either Party or any Affiliate of either Party, unless such restriction is waived in writing by the other Party. Any arbitration commenced hereunder shall be completed within ninety (90) days of the appointment of the arbitrator, absent agreement of the Parties to another time period. Discovery shall be limited to that deemed as necessary and appropriate by the arbitrator. The Parties shall each bear their respective costs and expenses relating to the arbitration and shall share the costs of the arbitrator and fees payable to JAMS, unless the arbitrator determines on motion of one Party that one or the other Party should bear a greater portion or all of the costs of the arbitration.

(b) The arbitrator, and not any federal, state or local court or agency, shall have exclusive power to decide all matters, including but not limited to, the interpretation, applicability, enforceability, formation and arbitrability of this Agreement and any claim that all or part of this Agreement is void or voidable, but must decide all disputes in accordance with Texas Law and the Federal Arbitration Act.

(c) The arbitration award shall be final and binding on both the Parties and shall be the sole and exclusive remedy between the Parties regarding the Dispute. Judgment upon an arbitration award may be entered and enforced in any court of competent jurisdiction.

19.3. Applicable Law

This Agreement, including each Statement of Work, shall be governed by, interpreted and enforced in accordance with laws of the State of Texas, without regard to the conflict of laws principles thereof.

20. RETENTION AND EXAMINATION OF INFORMATION, BOOKS AND RECORDS

(a) Purchaser has the right to audit records necessary to permit evaluation and verification of (i) claims submitted, (ii) change orders, and related overhead and general and administrative costs, and (iii) Seller's compliance with the Agreement. Purchaser's right to audit shall not extend to fixed, lump-sum or unit pricing.

(b) Seller shall cooperate with Purchaser and provide Purchaser with information and records pertaining to the Work as requested by regulatory bodies with jurisdiction over Purchaser, governmental agencies, Purchaser, or courts of law.

(c) Seller shall retain for a period of three (3) years after Agreement termination or expiration all information relating to the Work. Purchaser may audit and copy such information at Seller's premises during regular business hours. If requested by Purchaser, Seller shall submit to Purchaser a copy of each of its subcontracts. Seller shall include in its subcontracts a provision granting Purchaser the rights against Subcontractors contained in this Article 20.

21. MISCELLANEOUS

21.1. Payment

Within thirty (30) days after the Seller provides Purchaser with any invoice, the Purchaser shall remit payment of the amount set forth on the invoice to the Seller. Each payment to be made from the Purchaser to the Seller pursuant to this Agreement shall be made by the Purchaser to the Seller in cash by ACH of immediately available funds in accordance with the Seller's wire transfer instructions as set forth in Exhibit H. All prices under this Agreement are agreed in US Dollars.

21.2. Title to Seller Intellectual Property; License

Notwithstanding anything else in this Agreement, the Seller Intellectual Property shall not be transferred to the Purchaser and shall be retained solely and exclusively by the Seller. During the Term, all software upgrades and improvements associated with the DERA Platform will be included as part of the license outlined in this section and include as part of the Purchase Price.

As part of the Purchase Price, the Seller grants to Purchaser an exclusive, and royalty-free license to use the DERA Platform for the Term, for any purpose permitted under this Agreement, subject to the terms and conditions of this Agreement. No other license, grant or transfer of Intellectual Property rights is granted or intended in this Agreement.

Under no circumstances shall the license to the Seller Intellectual Property set forth in this Section 21.2 permit the Purchaser to decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, create derivative works, or disable security features of the DERA Platform. The license set forth in Section 21.2 is not sub-licensable by the Purchaser. Such license shall extend to any permitted assignee pursuant to Section 21.12, subject to the same terms and restrictions as stated in this Section 21.2.

The Purchaser and its permitted assignees shall not use the Seller Intellectual Property for any purpose other than as expressly authorized herein. The Seller warrants that the Seller is the owner of or has sufficient rights as a licensee to all Seller Intellectual Property and has all necessary rights to fulfill its obligations and grant all licenses and rights granted to Purchaser under this Agreement.

21.3. Ownership of Purchaser Data and Purchaser Data Security

All right, title and interest in Purchaser Data will remain with Purchaser. The Agreement does not provide Seller with title or ownership of Purchaser Data, but only a right of limited use, which does not include a right to use Purchaser Data in raw form, aggregated, or de- identified from beyond what is necessary to perform the Work under the Agreement or exercise its rights under the Agreement without the prior written consent of Purchaser.

Seller agrees to protect Purchaser Data in accordance with the Purchaser data privacy rules, procedures and guidance, Applicable Law, and this Agreement.

21.4. Ownership of all ACAP and Right to Market

Seller is enabling ACAP for the sole use of Purchaser and Purchaser owns all rights to the ACAP. Seller shall not have the right to market, or otherwise sell, any ACAP to any other entity without the guidance and express written consent of Purchaser.

21.5. Source Code Escrow

Upon request from Purchaser, Seller shall place in escrow, at Purchaser's expense, the most current version of the source code for the application software, including all updates, improvements and enhancements on an annual basis, in compliance with an escrow agreement negotiated between the Parties.

21.6. Notices

Unless this Agreement specifically requires otherwise, notices required by this Agreement shall be in writing and addressed to the other Party at the addresses noted below, as may be updated by either Party from time to time by notice to the other Party. A notice shall be deemed to have been received as follows: (1) if it is delivered by email, when the recipient acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment; and (2) if it is delivered in writing, when receipt is acknowledged in writing by the counterparty or, absent such acknowledgement, when delivered via registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery.

If to the Purchaser, to:

El Paso Electric Company
P.O. Box 962
El Paso, Texas 79960
ATTN: Judith Parsons
Email: Judith.parsons@epelectric.com

with a copy which shall not constitute notice to:

El Paso Electric Company
P.O. Box 962
El Paso, Texas 79960
ATTN: General Counsel
Email: epelegal@epelectric.com

If to the Seller, to:

Creation Energy LLC
2300 George Dieter Drive
El Paso, TX 79936
Attn: Chris Hickman, CEO
E-mail: chris.hickman@creation.energy

with a copy which shall not constitute notice to:

Creation Energy
Attn: Legal
2300 George Dieter Drive
El Paso, TX 79936
Legal@creation.energy

21.7. Entire Agreement

This Agreement supersedes any and all prior discussions and agreements between the Parties with respect to the subject matter hereof, including any prior letters of intent, term sheets or confidentiality agreements executed by the Parties in respect of the transactions contemplated by this Agreement, and contains the sole and entire agreement between the Parties with respect to the subject matter hereof, and there are no agreements, understandings, representations or warranties between the Parties other than those set forth herein.

21.8. Expenses

Except as otherwise expressly provided in this Agreement, and whether or not the transactions contemplated hereby are consummated, each Party shall pay its own costs and expenses incurred in connection with the negotiation, review, execution and performance of this Agreement.

21.9. Waiver

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by either Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

21.10. Amendment

This Agreement, including any Statement of Work, may be amended, supplemented or modified only by a written instrument duly executed by each Party.

21.11. Third Party Beneficiaries

Except as specified in Section 21.12 the terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person.

21.12. Assignment; Binding Effect

(a) This Agreement, including each Statement of Work, shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives. Neither Party shall have the right to assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Seller or Purchaser may assign this Agreement to any direct or indirect Affiliate of Seller or Purchaser. Additionally, notwithstanding the foregoing, with the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned, or delayed, either Party may assign its rights and interest under this Agreement to the successor of such Party or to a Person acquiring all or substantially all of such Party's assets. Seller shall notify Purchaser of any such assignment of this Agreement, or its rights or obligations hereunder, within thirty (30) days of making such assignment, including the name and contact information of the assignee. No assignment shall relieve Seller of its obligations hereunder, nor impair the security posted by Seller unless such security is replaced as approved by Purchaser. For the avoidance of doubt, and without limiting the foregoing, no Party may assign or otherwise transfer its rights or obligations under any individual Statement of Work without also assigning and transferring its rights and obligations to all Statements of Work.

(b) Notwithstanding anything to the contrary in this Agreement, Seller may, upon written notice to Purchaser, transfer, pledge, encumber, or assign this Agreement (including any Statement of Work), to a Financing Party in connection with any debt or equity (including tax equity) financing or refinancing for the Work.

(c) Purchaser will cooperate in a commercially reasonable manner with the Seller and the Seller's Financing Parties in connection with any debt or equity (including any tax equity) financing or refinancing for the Work, including, without limitation, by executing any estoppel certificates or similar instruments as reasonably requested by Seller; provided, however, that (i) Purchaser shall have no obligation to enter into any estoppel, consent or other agreement that adversely affects any of the Purchaser's rights or obligations under this Agreement, and (ii) Seller agrees to reimburse Purchaser for the costs and expenses (including the documented out of pocket fees and expenses of legal counsel to Purchaser) incurred by Purchaser in the preparation, negotiation, execution and delivery of any consent, estoppel or other document requested by Seller or Seller's Financing Parties. For the avoidance of doubt, any such estoppel, consent or other agreement with respect to a collateral assignment shall provide that the Financing Party is entitled to receive notice of, and have a reasonable opportunity to cure, any default by Seller.

21.13. Headings; Construction

The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective legal counsel. This Agreement shall not be construed against either Party, and no consideration shall be given or presumption made, on the basis of which Party drafted this Agreement or any particular provision hereof or which Party supplied the form of agreement.

21.14. Severability

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use commercially reasonable efforts to modify this Agreement in order to preserve and give effect, to the greatest extent possible, to the original intention of the Parties.

21.15. Counterparts; Digital Signatures

This Agreement may be executed in counterparts and counterparts may be exchanged by electronic transmission (including email) upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

21.16. Construction

Unless otherwise stated or the context of this Agreement provides otherwise: (i) the words "herein," "hereunder" and "hereof" refer to the provisions of this Agreement and a reference to a recital, Article, Section, Subsection, paragraph or Exhibit is a reference to a recital, Article, Section, Subsection, paragraph of or Exhibit to this Agreement; (ii) references to this Agreement, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment thereto; (iii) a reference to a paragraph also refers to the Subsection in which it is contained and a reference to a Subsection refers to the Section in which it is contained; (iv) a reference to this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Agreement or such other agreement, instrument or provision, as the case may be; (v) a reference to an Applicable Law or a provision of any Applicable Law includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such Applicable Law or provision; (vi) the singular includes the plural and vice versa; (vii) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural Person) and successors, substitutes (including Persons taking by novation) and permitted assigns; (viii) words of either gender shall include the corresponding words of the other gender; (ix) "including" means "including, but not limited to" and other forms of the verb "to include" are to be interpreted similarly; (x) where a period of time is specified to run from, after, or to a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day; (xi) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day; provided that the Term and any Statement of Work Term may expire on a day that is not a Business Day and such expiration will not be extended until the next Business Day; (xii) a reference to (X) a day (other than a Business Day) is a reference to a calendar day, (Y) a month is a reference to a calendar month and (Z) a year is a reference to a calendar year; (xiii) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; and (xiv) a reference to time is a reference to the time in effect in El Paso County, Texas, on the relevant date.

21.17. Other Business Pursuits of the Seller

The Purchaser acknowledges and agrees that this Agreement shall not preclude or limit in any respect the right of the Seller or any of its Affiliates to engage in or invest in any venture or business activity of any nature or description, and the Purchaser shall not have the right, by virtue of this Agreement or the relationship created hereby, to any interest in such other ventures or activities, or to the income or proceeds derived therefrom.

21.18. Conflicting Provisions

In the event of any conflict between this Agreement and any attachment or exhibit to this Agreement (excluding Statements of Work), the terms and conditions of this Agreement shall control. As applied to the Work contemplated in each Statement of Work entered into under this Agreement, in the event of any express conflict between this Agreement and any Statement of Work, the terms and provisions of the Statement of Work shall control.

[signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

Creation Energy LLC

DocuSigned by:
By: Chris Hickman ______
64E4D297A6F24BF...
Chris Hickman
CEO

El Paso Electric Company

DocuSigned by:
By: David C. Hawkins ___
E931341DFF85425...
David C. Hawkins
Vice President – System Planning & Operations

EXHIBIT A - SELLER'S REPRESENTATIVE AND PURCHASER'S REPRESENTATIVE

Seller's Representatives:

Primary:

Chris Hickman, CEO
chris.hickman@creation.energy
970-237-0990

Secondary:

John Marymont, CFO
John@creation.energy
832-969-7680

Purchaser's Representatives

Primary:

Tania Reichsfeld
tania.reichsfeld@epelectric.com
915-543-5727

Secondary:

David Hawkins
dave.hawkins@epelectric.com
915-472-3950

EXHIBIT B - WEATHER STATION LIST FOR AMBIENT TEMPERATURE

El Paso Airport

EXHIBIT C - SAMPLE COMMISSIONING CERTIFICATE*

Creation Energy
Empowering the Energy Transition

Customer Site Commissioning Certificate

General Information	
Commissioning Certificate #:	
Commissioning Date:	
ACAP Agent ID:	
Builder:	
Utility Meter ID:	

Site Information	
Site Address:	
Geospatial Location:	

Site Capacity	
ACAP of Site for Contract Capacity:	, kW

Acceptance Criteria	
Proper Installation Verified	
Emergency Disconnect	☐
Meter(s)/Meter Collar(s)	☐
Inverter	☐
Battery	☐
Span Panel	☐
Solar Panels & Racking	☐
EV infrastructure	☐
Fiber	☐
ACAP Agent and Computer Equipment	☐
Testing	
Creation Testing and Commissioning Complete	☐
DER Registry Record Complete	☐
Home Portal Setup Complete	☐
Builder Wi-Fi Enabled	☐

Signatures		
	Signature	Date
On-site commissioner:		
NOC commissioner:		
Utility Acceptance:		

*Final commissioning certificates completed with Purchaser as Agreement is completed. Sample Customer Site Commissioning Certificate shown and DER Site to be developed in cooperation with Purchaser.

EXHIBIT D - SAMPLE COMMISSIONING DISPUTE NOTICE FORM

Date Commissioning Notice Received	Purchaser Name	Commissioning Notice Batch Number	Commissioning Certificate Disputed (#)	Date of Dispute	Reason for Dispute	Date of Dispute Resolution

EXHIBIT E - FORM OF GUARANTY

FORM OF GUARANTY

This Guaranty (the "Guaranty"), dated as of [______] [___], 20[__] (the "Effective Date"), is executed and delivered by [______________________], a [_________] [_______] ("Guarantor"), in favor of El Paso Electric Company ("Company"), in connection with the performance by [______________________], a [_________] [_______] ("Seller") of that certain [__________], dated [__________] [__], 20[__], by and between Seller and Company (as amended, restated, supplemented or otherwise modified from time to time, the "Contract"). Capitalized terms used but not defined herein shall have the meanings set forth in the Contract.

RECITALS

A. To induce Company to enter into the Contract, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

B. Guarantor will benefit from the Contract between Company and Seller.

NOW, THEREFORE, in consideration of the foregoing and as an inducement for Company's execution, delivery and performance of the Contract, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Company as follows:

AGREEMENT

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the Contract, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

   a. The liability of Guarantor under this Guaranty is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Contract or the pursuit by Company of any remedies which it now has or may hereafter have under the Contract;

   b. Company may enforce this Guaranty for Seller's failure to meet any of its obligations under the Contract, including upon the occurrence of a default by Seller under the Contract notwithstanding the existence of a dispute between Company and Seller with respect to the existence of a failure or default;

   c. The obligations of Guarantor under this Guaranty are independent of the obligations of Seller under the Contract and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Seller or any other guarantors and whether or not Seller is joined in any such action or actions;

d. Company may, at its election, foreclose on any security held by Company, or exercise any other right or remedy available to Company without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Company by Seller have been paid;

e. Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding: (i) any modification, amendment, supplement, extension, agreement or stipulation between Seller and Company or their respective successors and assigns, with respect to the Contract or the obligations encompassed thereby; (ii) Company's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Contract; (iii) any release of Seller or any other guarantor from any liability with respect to the Obligations or any portion thereof; (iv) any release, compromise or subordination of any real or personal property then held by Company as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto; (v) without in any way limiting the generality of the foregoing, if Company is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit; (vi) Company's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty; (vii) Company's exercise of any other rights available to it under the Contract; (viii) Company's consent to the change, reorganization or termination of the corporate structure or existence of the Seller and to any corresponding restructuring of the Obligations; (ix) any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations; and (x) any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations; and

f. Guarantor agrees that upon a demand for payment under this Guaranty, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Seller may allege or assert against Company with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Seller may allege or assert against Company (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _______________ ($_______________), plus costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company.

3. Performance; Payment. If any of the Obligations are not performed according to the tenor thereof ("Failure"), Guarantor shall immediately (but in no event later than three (3) Business Days) upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Failure, and (b) pay, reimburse, and indemnify Company against any liabilities,

damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct. All sums payable by Guarantor hereunder shall be made in immediately available funds in U.S. Dollars.

4. Term; Satisfaction.

   a. This Guaranty shall continue in full force and effect until the earlier to occur of: (i) the substitution of an alternative form of Security in accordance with the Contract; (ii) the satisfaction of all Obligations of Seller under the Contract; or (iii) the payment by Guarantor, without reservation of rights, of an aggregate amount equal to the maximum liability set forth in Section 2, together with any other amounts required to be paid by Guarantor pursuant to Section 9 hereof.

   b. Satisfaction by Guarantor of any duty hereunder incident to a particular Failure or the occurrence of any other Failure shall not discharge Guarantor except with respect to the Failure satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full.

5. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Company, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Seller. The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Seller or by any defense which Seller may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal bankruptcy code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

   a. all set-offs, counterclaims, withholdings or deductions and all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by applicable laws;

   b. any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

   c. any defense based upon an election of remedies by Company;

   d. any duty of Company to protect or not impair any security for the Obligations;

e. any defense based upon promptness, diligence, and any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto;

f. the benefit of any laws limiting the liability of a surety or any other circumstance that limits the liability of or exonerates a guarantor generally or provides any legal or equitable discharge of Guarantor's obligations hereunder;

g. other than demand for payment, any requirement of notices between Company and Seller including, without limitation, notice of acceptance of this Guaranty, any information regarding Seller's financial condition, and all other notices whatsoever; and

h. until all Obligations in Failure have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder.

7. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the Contract. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

8. Representations and Warranties. Guarantor represents and warrants to Company as follows:

a. Guarantor is a [corporation], duly organized, validly existing, and in good standing under the laws of the state of its [incorporation]. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

b. The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

9. Collection Costs. Guarantor shall pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

11. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor. Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of Company, which consent may be withheld in its sole discretion. Company shall have the right to assign this Guaranty to any person or entity without the prior written consent of Guarantor; provided, however, that no such assignment shall be binding upon Guarantor until it receives written notice of such assignment from Company.

13. Governing Law. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Texas, without regard to principles of conflicts of laws thereunder that would trigger the application of any other law. All dispute arising out of or related to this Guaranty shall be brought in the state or federal courts located in El Paso, Texas. Guarantor waives any claim or defense that such action or proceeding brought in any such court is an inconvenient forum, any objection to venue with respect to such action or proceeding, and any right of jurisdiction on the account of the place of residence or domicile of the Guarantor.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing, addressed as set forth below, or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth herein. Any such notice, request, consent, or other communication shall either be hand delivered, sent via overnight service with signature required upon receipt, or delivered by electronic mail and shall be deemed to have been received by the close of the Business Day on which it was delivered or transmitted electronically (unless delivered or transmitted after such close in which case it shall be deemed received at the beginning of the next Business Day).

If to Company:

El Paso Electric Company
100 N. Stanton St.
El Paso, Texas 79901
Phone: (915) 543-0001
Email: legal@epelectric.com

With a copy to:

El Paso Electric Company
100 N. Stanton St.
El Paso, Texas 79901
Attn: [____________]
Email: [___________]

If to Guarantor:

____
____
____

Attn:
Phone: (___) ________
Email:

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the Effective Date.

[Name of Guarantor]

By:____
Name:
Title:

EXHIBIT F - CONTRACT CAPACITY & GRID EMERGENCY CAPACITY

Contract Capacity

Contract Capacity is designed to blend solar, battery, demand response and energy efficiency to provide an 8-hour dispatch each day of the year (365 days a year, 8 hours a day, or 2,920 hours; a 33% capacity factor resource) but with the flexibility of the Purchaser to dispatch and utilize the products individually to maximize their value to the overall needs of Purchaser. A Customer Site or DER Site is comprised of multiple DERs and could change over time with the mutual agreement of the Parties. For example, EV control and potential EV dispatch to grid may be a future DER at Customer Sites. The current DERs to be deployed for Customer Sites and DER Sites are defined further in this Exhibit.

Customer Site

The DERs for a Customer Site are expected to be comprised of three different DERs: (1) solar; (2) battery; and (3) demand response. Each of the different Customer Site DERs enable an allocated contribution of grid energy efficiency by helping correct power factor and phase balance. Unless otherwise set forth in a Statement of Work, the solar array on each Customer Site will be sized at 10-20kW. Unless otherwise set forth in a Statement of Work, the battery on each Customer Site will be sized at ~60kWh. Unless otherwise set forth in a Statement of Work, both solar and battery are connected to the grid via a 15-18kW inverter which governs the output to the grid to 15-18kW per hour. To create a blended product that guarantees Contract Capacity per hour for an 8-hour period each day during the peak hours of the load duration curve, solar would be fully utilized and battery capacity would make up the difference each hour to reach the Contract Capacity. However, EPE may choose to dispatch these resources in the manner best suited for its system each day. Unless otherwise set forth in a Statement of Work, demand response would provide 5kW of capacity as defined in Exhibit G. Energy efficiency is created on the grid by correcting power factor and improving Phase Balance for the distribution feeder and, unless otherwise set forth in a Statement of Work, will be defined to provide 0.5kW of capacity per Customer Site. It is possible that two complete systems may be placed on a single Customer Site to double the Contract Capacity for the Customer Site and would be reflected on the Commissioning Certificate. Nothing in this section limits Purchaser's ability to dispatch resources at different times (non-coincident), as Purchaser determines appropriate for the optimal operation of its system.

In addition, the Seller and the Seller's Foundation seeks to deploy on a limited number of commercial Customer Sites. The Seller's Foundation will focus on resiliency for critical customers like police, fire, emergency response, water, wastewater and other critical care customers. The Seller may deploy onto commercial facilities within the master planned communities. In either case, the Contract Capacity will be pre-defined, and pre-approved, by Purchaser prior to deployment and will be documented on the Commissioning Certificate to be included in Contract Capacity under each Statement of Work.

During any Statement of Work Term, Customer Sites may be eliminated or disabled.

Seller shall have the ability to replace these Customer Sites over a 6-month period to meet required Contract Capacity; provided, however, nothing in this paragraph excuses Seller from its performance obligations as set forth in a Statement of Work, subject to relief for a Force Majeure Event as provided in Section 14.7 of the Agreement.

DER Site

The DERs for a DER Site are currently comprised of two different DERs: (1) solar and (2) battery. In addition, there is an allocated contribution of grid energy efficiency for each DER Site. Unless otherwise set forth in a Statement of Work, the solar array on each DER Site will be sized at 50-100kW and documented on each Commissioning Certificate. Unless otherwise set forth in a Statement of Work, the battery on each DER Site will be sized at ~10MWh and documented on each Commissioning Certificate. Unless otherwise set forth in a Statement of Work, both solar and battery are connected to the grid via a 1,250kW inverter which governs output to the grid to 1,250kW per hour. To guarantee the Contract Capacity per hour for an 8-hour period each day, solar will be fully utilized and battery capacity could be dispatched at 1,000kW per hour (or as otherwise provided in a Statement of Work) for each of the 8 hours for Standard Dispatch. However, Purchaser may set the dispatch to the full capability of the inverter for a Custom Dispatch. Energy efficiency is created on the grid by correcting power factor and improving Phase Balance for the distribution feeder and, unless otherwise set forth in a Statement of Work, will be defined to contribute 160kW of capacity for each DER Site. Nothing in this section limits Purchaser's ability to dispatch resources at different times (non-coincident), as Purchaser determines appropriate for the optimal operation of its system.

Grid Emergency Capacity

Grid Emergency Capacity is comprised of additional demand response at Customer Sites and DER Sites that is not typically utilized. This will include switched loads (turning off washer, dryer, electric range and other switched loads), wider temperature bands for HVAC, ceasing all EV Charging, etc. These changes impact Customers negatively and can only be used for emergency purposes and are delivered on a commercially reasonable basis.

EXHIBIT G - DEMAND RESPONSE AND ENERGY EFFICIENCY DEFINED CONTRIBUTION AND ALLOCATION TO CUSTOMER SITES AND DER SITES

The DERA Platform is designed to provide utilities such as Purchaser with a means to aggregate distributed energy resources (DERs). The ACAP consists of a variety of technologies that all play a vital role. When fully deployed and operational, the ACAP converts previously unquantified and non-dispatchable resources into trusted, verifiable, managed capacity. ACAP can be controlled and observed in real-time through the user interface (Utility Portal) provided to the Purchaser operations personnel, or through direct control of existing utility systems.

Visualization of real-time capacity performance at the end-use Customer level is a new concept for DERs. Blending DERs that create energy (solar) or provide injection of energy into the grid (batteries) with demand response is also a new concept. When these resources are blended into ACAP at a single site, traditional baselining techniques no longer work due the variability production and dynamic charge and discharge cycles of the batteries. Therefore, for the purpose of providing demand response as part of the DER aggregation, a defined contribution is established for each Customer Site to be included in Contract Capacity and documented in the ACAP Pricing Table.

Demand Response

The Available Capacity of demand response is dependent on Ambient Temperature for cooling and heating load (“HVAC Demand Response”). HVAC Demand Response is available when Ambient Temperature is above or below the set point established at Customer Site. Typical settings for cooling are 72 degrees Fahrenheit and typical settings for heating are 68 degrees Fahrenheit. Therefore, HVAC Demand Response is only consistently available when the Ambient Temperature is above 80 degrees Fahrenheit or below 60 degrees Fahrenheit and shall be defined as being available for Dispatch under these conditions and presented in the Utility Portal for dispatch or scheduling for Reserves Request.

A standard 5-ton heat pump used at Customer Sites will draw approximately 5-8 kW at full load depending on Ambient Temperature and represent at least 5kW of ACAP. Water Heater Demand Response is based on a variety of factors including number of people residing at a Customer Site, incoming water temperature, water heater insulation, etc. However, the typical capacity of a 40-gallon hot water heater is 3-4kW and represents at least 3kW of ACAP.

Other large load demand response (pool pumps, hot tubs, etc.) vary according to their equipment specifications. However, each of these loads, including EV charging and switched loads, are monitored by the DERA Platform. As such an ACAP of at least 5kW can be achieved through the aggregated control of all these customer devices/switched loads and made available to the utility for use in their ACAP. If ancillary services are called upon, the ACAP of at least 5kW per Customer Site will be delivered, or for any other Dispatch Event the utility chooses to dispatch demand response. For any Grid Emergency Event, the Contract Capacity plus any other additional demand response available at Customer Sites (e.g., stopping EV charging, turning off other switched loads, etc.) will be dispatched by the DERA Platform on a commercially reasonable efforts basis.

Demand response may be scheduled daily (when available based on Ambient Temperature) into the utility reserves portfolio. Demand response may be dispatched daily (when available based on Ambient Temperature) for two, four-hour periods with a minimum three-hour rest period between dispatches.

Grid Emergency Events are expected to be rare. However, unless otherwise set forth in a Statement of Work, Seller does not restrict the number of Grid Emergency Events to support the Purchaser.

Energy Efficiency

Energy efficiency is typically associated with improved technology performance for a change in technology. Higher efficiency equipment (LEDs vs Incandescent light bulbs, or new, more efficient HVAC units, etc.) is typically how utilities seek to achieve energy efficiency savings through utility energy efficiency programs. The DERA Platform is the first platform to target grid efficiency. Power factor and phase imbalance represent 40%-60% of technical grid losses. The DERA Platform, when provided SCADA data for each distribution feeder, can correct power factor to unity power factor and help improve phase imbalance. The table below illustrates the energy efficiency savings for a typical distribution feeder for both a conservative and high case.

Conservative Case			25,000 Homes on Network		
Feeder Rating	10	MVA			
Feeder Average Load	4,000	kW			
Feeder Annual Energy	35,040,000	kWh			
Avg Losses @ 10%	3,504,000	kWh			
PF/PB Effect @40%	1,401,600	kWh			
Annual kWh savings	1,401,600	kWh			
Feeders affected	50		70,080,000	kWh	Annual EE savings
			8,000	kW/hr	Hourly capacity reduction on Grid
*Based on 500 homes/feeder			8	MW/hr	Hourly capacity reduction on Grid
High Case					
Feeder Rating	10	MVA			
Feeder Average Load	6,000	kW			
Feeder Annual Energy	52,560,000	kWh			
Avg Losses @ 10%	5,256,000	kWh			
PF/PB Effect @60%	3,153,600	kWh			
Annual kWh savings	3,153,600	kWh			
Feeders affected	50		157,680,000	kWh	Annual EE savings
			18,000	kW/hr	Hourly capacity reduction on Grid
*Based on 500 homes/feeder			18	MW/hr	Hourly capacity reduction on Grid

Conservative Case				250 Stations on Network		
Feeder Rating	10	MVA				
Feeder Average Load	4,000	kW				
Feeder Annual Energy	35,040,000	kWh				
Avg Losses @ 10%	3,504,000	kWh				
PF/PB Effect @40%	1,401,600	kWh				
Annual kWh savings	1,401,600	kWh		350,400,000	kWh	Annual EE savings
kW/hour effect on feeder	160	kW/hr		40,000	kW/hr	Hourly capacity reduction on Grid
MW/hour effect on feeder	0.16	MW/hr		40	MW/hr	Hourly capacity reduction on Grid
High Case						
Feeder Rating	10	MVA				
Feeder Average Load	6,000	kW				
Feeder Annual Energy	52,560,000	kWh				
Avg Losses @ 10%	5,256,000	kWh				
PF/PB Effect @60%	3,153,600	kWh				
Annual kWh savings	3,153,600	kWh		788,400,000	kWh	Annual EE savings
kW/hour effect on feeder	360	kW/hr		90,000	kW/hr	Hourly capacity reduction on Grid
MW/hour effect on feeder	0.36	MW/hr		90	MW/hr	Hourly capacity reduction on Grid

The conservative case illustrates 160kW/hour of energy efficiency and the optimal, or high case, illustrates 360kW/hr. This translates to ~0.6 kW per Customer Site and 160kW per DER Site. Seller and Purchaser agree to work cooperatively to validate these savings over time and modify the energy efficiency allocation at each site accordingly.

EXHIBIT H - SELLER'S FUNDS TRANSFER INSTRUCTIONS

ACH Payment Instructions (Preferred U.S. payment method)	
ABA #	111900659
For credit to	Creation Energy LLC
Account #	7801716148

Wiring Instructions (USD Denominated Only) Contact Creation Energy if different currency agreed upon for alternate instructions	
Bank	Wells Fargo Bank, N.A. (808) P.O. Box 6995 Portland, OR 97228-6995
Swift BIC	WFBIUS6S
ABA #	121000248
For credit to	Creation Energy LLC
Account #	7801716148

Banking Contact Information:

Wells Fargo Bank, N.A. (808)
P.O. Box 6995
Portland, OR 97228-6995
Phone: +1 (800) 225-5935

Please direct questions to:

Phone: +1(970) 237-0990
Email: Creation.Energy.AR@Creation.Energy

EXHIBIT I - SAMPLE FORM OF STATEMENT OF WORK

Statement of Work Number – SOW Number *[X]*

Contract Capacity – *[__________] (refer to Exhibit F)*

Project Overview and Description

This is an overview of the project to describe any specific parameters required for the project or additional information that is needed to clearly define the scope of project or any additional contractual arrangements necessary.

Conditions Precedent to Effectiveness

Sets forth any conditions precedent to the effectiveness of the Statement of Work (e.g., regulatory approvals).

Target Commencement Date For Operational Period – *Target date for commencement of the Operational Period, including, as applicable, agreed liquidated damages for delay.*

ACAP Pricing Table

The Pricing Table will be inserted that will detail all necessary pricing and deployment information for the Project.

To the extent a Production Reservation Payment is contemplated, the terms of payment and potential refundability shall be set forth in the Statement of Work.

Performance Guarantees/Milestones

Sets forth any agreed Performance Guarantees, including measurements periods and remedies for breach, including damages and potential termination of SOW.

Security Fund Amount

Seller's total Security Fund obligation to Purchaser in connection with the Statement of Work, which may be an increase in the existing total Security Fund of Seller *reflecting Statements of Work previously entered into and effective.*

<u>Other Provisions</u>

Any other terms and conditions specific to the Statement of Work.

<u>Signature</u>

No Statement of Work shall become effective until signed by both Purchaser and Seller and, to the extent applicable, satisfaction of all conditions precedent to effectiveness set forth in the Statement of Work.

EXHIBIT J – SAMPLE ACAP PRICING TABLE

Statement of Work Number [__]	
Deployment Period (Months)	[__]
Operational Period (Years)	[__]
Customer Sites	[__]
DER Sites	[__]
Contract Capacity (MW)	[__]
Contract Capacity Price ($/kW-year)	[__]
Annual price Escalation, if applicable	[__]
ACAP for Customer Site (kW)	[__]
DR for Customer Site (kW)	[__]
ACAP for DER Site (kW)	[__]
Production Reservation Price, if applicable ($/kW)	[__]
DER Registry Membership, if applicable	[__]

Note: As builders are engaged and the number of customer sites are defined in each of their developments, it is not possible to exactly acquire a specific number of Customer Sites as we do not want to install only a portion of a community with a builder. The Contract Capacity Deployed shall vary slightly based upon the number of Customer Sites deployed in this process.

EXHIBIT K - PRICING FOR PURCHASE OR TERMINATION

Purchaser Purchase Option

At any time in which Purchaser informs Seller in writing that it wishes to exercise its purchase option as provided in Section 1.9, the option price shall be based on a fair market value as agreed by the Parties or determined by an independent third-party appraisal agreed upon by the Parties; provided, that if the Purchase Option involves DERs for which the Operational Period has commenced, the fair market value shall take into account the Purchase Price under the applicable Statement of Work for the remaining Operational Period of the applicable Statement of Work, discounted at El Paso Electric's WACC as most recently approved in the applicable jurisdiction for the equipment authorized in the applicable Statement of Work.

Upon confirmation of the fair market value, the Parties shall negotiate and execute a purchase and sale agreement, which shall include commercially reasonable terms reflective of an arms-length transaction not among affiliated entities. The purchase and sale agreement shall include Seller's grant of a perpetual, irrevocable and royalty-free license to Purchaser for use of the DERA Platform.

Purchaser Step-In Rights

In the event Purchaser exercises its rights under Section 14.6, the purchase price shall be based on the cost of the DERs and associated equipment less Depreciation. "Depreciation" shall be defined and calculated by applying the straight-line depreciation method for the DER remaining useful life as measured from the Commissioning Certificate acceptance date of each applicable Commissioning Certificate.

The Parties shall negotiate and execute a purchase and sale agreement reflecting Purchaser's purchase of the DERs and associated equipment, which shall include commercially reasonable terms reflective of an arms-length transaction not among affiliated entities. The purchase and sale agreement shall include Seller's grant of a perpetual, irrevocable and royalty-free license to Purchaser for use of the DERA Platform.

Seller Termination For Cause

In the event of Termination for Cause by the Seller, the price of the equipment shall be based on the Contract Value of the equipment less Depreciation. "Contract Value," as applied to any Statement of Work, shall be defined as the product of the following:

(a) Contract Capacity Price, and
(b) the number of years remaining under the Operational Period, and
(c) the Contract Capacity Deployed plus any portion of the Contract Capacity that was not realized by Seller due to an uncured breach of the Agreement by Purchaser as provided in clause (c) of Section 14.3.

EXHIBIT L - SAMPLE CALCULATIONS FOR MONTHLY INVOICES

The purchase price (the ***"Purchase Price"***) shall be equal to the Contract Capacity Deployed multiplied by the Monthly Contract Capacity Price, as defined in the ACAP Pricing Table

"Contract Capacity Deployed" means the total ACAP installed, which may not exceed the Contract Capacity by more than five percent (5%) unless mutually agreed in writing by the Parties.

"Monthly Contract Capacity Price" means the Contract Capacity Price divided by twelve (12) considering the Price Escalation

Assumptions:

- Statement of Work effective date: January 1, 2026

Sample Calculations

Sample calculations shown below in the first table illustrate the monthly billing parameters starting in January 2026 through July 2026 to show how Newly Commissioned ACAP and Cumulative ACAP are considered each month. The second table illustrates future year calculations.

	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26	Jul-26
Contract Capacity Price ($/kW)	$340	$340	$340	$340	$340	$340	$340
(x) Price Escalation	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Contract Capacity Price with Price Escalation ($/kW	$340	$340	$340	$340	$340	$340	$340
(/) Months/Year	12	12	12	12	12	12	12
Monthly Contract Capacity Price ($/kW)	$28.33	$28.33	$28.33	$28.33	$28.33	$28.33	$28.33
Newly Commissioned ACAP (kW)	*250*	*500*	*750*	*1,000*	*1,500*	*2,500*	*2,500*
Cumulative ACAP deployed in Prior Periods (kW)	–	*250*	*750*	*1,500*	*2,500*	*4,000*	*6,500*
(x) Contract Capacity Deployed (kW)	250	750	1,500	2,500	4,000	6,500	9,000
Purchase Price ($)	$7,083	$21,250	$42,500	$70,833	$113,333	$184,167	$255,000

	Jan-27	Jul-27	Jan-28	Jul-28
Contract Capacity Price ($/kW)	$340	$340	$340	$340
(x) Price Escalation	1.030	1.030	1.061	1.061
Contract Capacity Price with Price Escalation ($/kW)	$350	$350	$361	$361
(/) Months/Year	12	12	12	12
Monthly Contract Capacity Price ($/kW)	$29.18	$29.18	$30.06	$30.06
Newly Commissioned ACAP (kW)				
Cumulative ACAP deployed in Prior Periods (kW)				
(x) Contract Capacity Deployed (kW)	14,000	19,000	24,000	29,000
Purchase Price ($)	$408,567	$554,483	$721,412	$871,706

EXHIBIT M - INTERCONNECTION ONE-LINE DIAGRAM

To be completed as Part of the Technical Demonstration project in Statement of Work #1.

EXHIBIT N - PROJECT KICKOFF SAMPLE SCHEDULE

The following Provides the High-Level Milestones for the Project

With "Day 0" defined as the effective date of the applicable Statement of Work, below are the goal timelines for each Milestone in the Kickoff Process for the project. This information is provided to help understand the necessary components for success and template to get started.

A. Mobilization

a. Day 0: Name and document the executive sponsors and project managers.

b. Day 0: Purchaser and Seller establish date for kick off meeting and all participants required to be in attendance. Additional half-day deep dive developer and builder Interaction meeting to include mandatory education on developer and builder interaction for all of Purchaser's employees who interact with developers and builders.

c. Day 7: (Morning) Purchaser kick-off half-day meeting with Seller to outline the program to all internal Stakeholders of Purchaser. During this Purchaser kick-off meeting, Seller provides Purchaser and Purchaser Stakeholders with:

   i. overview of the entire concept of creating DER Aggregations for use by the utility (feeder level impacts, bulk portfolio impacts, customer impacts, etc.),
   ii. overview of builder and developer presentations and structure of engagement for the project,
   iii. detailed explanation of Customer Sites, DER Sites and the equipment to be deployed on each site,
   iv. detailed explanation of the necessary data exchanges with the Purchaser SCADA, GIS, Asset and Customer systems,
   v. overview of the DER Registry and team to begin deployment for Purchaser use for Day 10 meeting,
   vi. overview of required fiber and steps to negotiate required agreements, and
   vii. discussion of Dispatch (Utility Portal) and potential long-term to Dispatch from existing utility systems (and ICCP).

d. Day 7: (Afternoon) Purchaser and Seller half-day deep dive meeting with Purchaser employees who work with developers and builders.

   i. Overview of the Seller process with developers and builders – agreements, easements, bill aggregator concept, etc.,
   ii. Coordination with developers and builders moving forward,
   iii. Kickoff discussion to set up dedicated points of contact between Seller and Purchaser specific to required interconnection applications, studies and agreements.

e. Day 8: Purchaser and Seller meeting to discuss required data exchanges and establish coordination points between Purchaser and Seller to complete any necessary work to enable required data exchanges.

f. Day 10: (Morning) Purchaser and Seller meeting on deployment of DER Registry.
g. Day 10: (Afternoon) Purchaser and Seller meeting on Creation Foundation and agreed approach for coordination on customer outreach.
h. Day 11: (Morning) Purchaser and Seller finalize how, and at what frequency, communication/meetings will occur between the two organizations for the duration of the project.
i. Day 11: (Afternoon) Purchaser and Seller meet to discuss Project Reporting, Budget and any additional coordination required.
j. Day 12: (Morning) Purchaser and Seller meet to discuss Dispatch short-term and long-term.
k. Day 12: (Afternoon) Parties confirm details of Statement of Work with respect to deployment and commissioning, including:
    i. coordination mechanism for deployment schedule;
    ii. process for how Seller will commission each Site after it is installed and operational and provide a Commissioning Certificate to Purchaser for approval and acceptance of the Site; and
    iii. Parties walking through and confirming Statement of Work Term, anticipated Operational Period, Deployment Period, and details of ACAP Pricing Table.

EXECUTION

Creation Energy

Statement of Work #1

For El Paso Electric

Master Power Purchase Agreement

Statement of Work Number	1
Effective Date	March 5, 2026
Contract Capacity (MW)	0.0205

This Statement of Work in entered into between Creation Energy LLC, a Texas limited liability company ("Seller"), and El Paso Electric Company, a Texas corporation ("Purchaser"), pursuant to that certain Master Power Purchase Agreement between Seller and Purchaser, dated March 5, 2026 (the "Agreement"). Except as otherwise defined below in this Statement of Work, all capitalized terms shall have the meanings as assigned to them in the Agreement.

Project Overview and Description

The project addressed in this Statement of Work (the "Project") establishes a DER demonstration site at the Purchaser's Technical Training Facility located at Purchaser's Eastside Operations Center in El Paso, Texas. The site will have the following equipment:

- Ground mount solar array ~20kW
- Two 6 stack HomeGrid batteries
- Span Panel
- Sol-Ark Inverter
- Associated Interconnection Equipment

The goal of the Project is to familiarize Purchaser with the different equipment being utilized by Creation Energy and to test a variety of concepts over time that may lead to future Statements of Work under the Agreement. For this Project, initially, the Parties will be testing how the Sol-Ark inverter measures solar output and how Seller communicates this information safely and effectively into the applicable utility systems of Purchaser, including, but not limited to, utilizing and testing the Utility Portal. In addition, through this Project the Parties intend to (i) collaborate in the development and design of a two-meter structure, and (ii) test the potential bypass switch if the Parties determine the Sol-Ark bypass is inadequate. Purchaser will make any revisions to El Paso Electric's Electric Service Requirements Book (also referred to as the "Blue Book") that Purchaser deems necessary to facilitate the 'above the meter' interconnection of the Project.

This Project is intended to assist Seller and Purchaser as they coordinate in the development of a process that supports the timely and efficient permitting, interconnection and commissioning of DER Sites and Customer Sites under future Statement of Works consistent with the provisions of the Agreement.

As part of this Project, Seller will also:

- support all necessary regulatory filings, meetings and interactions to support Purchaser in developing applications and seeking approval of proposed Statement of Work #2, as described in the recitals to the Agreement;
- cooperate with Purchaser and Purchaser's contractors to finalize an incremental value stream analysis for Seller's contemplated products and services provided under the Agreement; and
- cooperate with Purchaser and Purchaser's contractors to perform modeling runs as Purchaser deems appropriate to support the proposed Statement of Work #2.

Conditions Precedent to Effectiveness

None

Target Commencement Date For Operational Period

March 2026 – Depends on timing of permits

ACAP Pricing Table

Statement of Work – Number 1	
Deployment Period (Months)	Up to 3 months, depending on timing of permits
Operational Period (Years)	Until terminated as mutually agreed by the Parties, provided Purchaser has the unilateral right to terminate the Statement of Work (i) upon notice to Seller that Purchaser would like the DER subject to this Statement of Work #1 deployed as a Customer Site under another Statement of Work entered into under this Agreement, (ii) upon any closure, redevelopment or sale of the premises, or (iii) after ten years, upon 90 days prior written notice to Seller
Customer Sites	1
DER Sites	0
Contract Capacity (MW)[3]	.0205
Contract Capacity Price ($/kW-year)	N/A (but see flat fee below)
Price Escalation begins 1 year after Effective Date	N/A
ACAP for Customer Site (kW)	20.5

DR for Customer Site (kW)	N/A
ACAP for DER Site (kW)	N/A
DR for DR Site (kW)	Dynamic as a test site
Production Reservation Price for DER Sites ($/kW)	N/A (but see flat fee below)
Flat Fee for Project	Purchaser to pay Seller a one-time fee of $350,000.00 for project, due fifteen (15) Business Days following receipt of invoice from Creation

Performance Guarantees/Milestones

N/A

Security Fund Amount

N/A

Other Provisions

Equipment Removal. Upon the expiration or termination of this Statement of Work, Seller shall, at Purchaser's written request, decommission, uninstall, and remove all equipment from the Purchaser's premises in coordination with Purchaser, in compliance with Applicable Laws, and restore the premises to their condition pre-Effective Date, ordinary wear and tear excepted.

[remainder of this page intentionally left blank]

EXECUTION

IN WITNESS WHEREOF, this Statement of Work has been duly executed and delivered by the duly authorized officer of each Party as of the Effective Date.

Seller:

CREATION ENERGY LLC

By: DocuSigned by: Chris Hickman 64E4D297A6F24BF... ______________

Chris Hickman
CEO

Purchaser:

EL PASO ELECTRIC COMPANY

By: DocuSigned by: David C. Hawkins E931341DFF85425... __________

David C. Hawkins
Vice President – System Planning & Operations

Execution

Creation Energy

Statement of Work #2

For El Paso Electric

Master Power Purchase Agreement

Statement of Work Number	2
SOW Execution Date	April 15, 2026
Target Contract Capacity (MW)	5.125

This Statement of Work, dated April 15, 2026 (the "SOW Execution Date") in entered into between Creation Energy LLC, a Texas limited liability company ("Seller"), and El Paso Electric Company, a Texas corporation ("Purchaser" or "EPE"), pursuant to that certain Master Power Purchase Agreement between Seller and Purchaser, dated March 5, 2026 (the "Agreement"). Except as otherwise defined below in this Statement of Work, all capitalized terms shall have the meanings as assigned to them in the Agreement.

<u>Project Overview and Description</u>

Statement of Work 2 (the "Project") relates to Seller's support of EPE in establishing a demand response (DR) and distributed energy resources (DER) pilot program in EPE's New Mexico retail service territory. The Project will involve Seller's supply, development, installation, commissioning and operation of DR and DER resources on (i) up to 250 Customer Sites and (ii) no more than one DER Site, subject to agreement of Seller and EPE on the capacity sizing and characteristics of the DER Site. As part of the Project, Seller shall use commercially reasonable efforts to install and operate up to ten (10) Customer Sites at low-income housing in the City of Las Cruces. If the Project, or portions of the Project, require the installation of fiber for any Customer Sites or the DER Site, or Seller and EPE determine that the installation of fiber would be advantageous with respect to the Project or any Site comprising a portion of the Project, EPE and the Seller will engage in a commercially reasonable manner in the negotiation of a fiber sharing agreement, subject to the provisions of Section 2.2(iv) of the Agreement.

<u>Conditions Precedent to Effectiveness</u>

Each of Seller and Purchaser's obligations under this Statement of Work are subject to satisfaction or waiver by Purchaser in writing of the following conditions, provided that if these conditions have not been satisfied or waived by the Parties within three hundred sixty five (365) days following the SOW Execution Date, either Seller or Purchaser may terminate this Statement of Work by providing written notice to the other Party at least sixty (60) days prior to the requested termination date. The date that all of the conditions set forth below have been satisfied or waived by the Parties shall be deemed the "SOW Effective Date."

(1) New Mexico Public Regulation Commission ("NMPRC") Approval. EPE will no later than thirty (30) days following the SOW Execution Date apply for NMPRC approval of the Agreement and this Statement of Work ("NMPRC Approval"). Seller shall reasonably cooperate with EPE's efforts to obtain the NMPRC Approval. EPE shall have the right to terminate this Statement of Work by written notice to Seller at any time following issuance of a final and non-appealable written order by the NMPRC or any other Governmental Authority rejecting EPE's application for NMPRC Approval or granting NMPRC Approval with conditions that materially alter the terms of the Project or the obligations of the Parties. If EPE elects to terminate this Statement of Work as provided in this clause, neither Seller nor EPE shall have any obligations or liabilities to each other hereunder as a result of such termination.

(2) Interconnection Details. Consistent with Section 8.2 of the Agreement, EPE and Seller, each acting reasonably and in good faith, must agree in writing to the technical scope of work with respect to the installation and maintenance of a direct electrical connection between EPE's retail service grid and each Customer meter associated with a Customer Site so that EPE maintains the ability to directly serve its Customers consistent with prudent utility practice in the event of an emergency or failure of Seller equipment, including the DERA Platform.

(3) Exhibit M of Agreement. EPE and Seller, each acting reasonably and in good faith, must agree on the form of Exhibit M of the Agreement and amend the Agreement to include the completed and agreed Exhibit M.

Target Operational Period Commencement Date

Notwithstanding anything in the Agreement to the contrary, the Operational Period for the Project shall commence upon completion of the Deployment Period (the "Operational Period Commencement Date"); provided, however, that Seller may commence the Operational Period prior to achieving the full Target Contract Capacity stated in the ACAP Pricing Table below if the aggregate ACAP for Commissioned and Accepted Sites equals or exceeds one (1) MWs (the "Minimum Contract Capacity").

Seller shall commence the Operational Period with at least the Minimum Contract Capacity within twenty-four (24) months after the SOW Effective Date (the “Target Operational Period Commencement Date”). EPE shall have no obligation to agree to commencement of the Operational Period for the Project at a capacity less than the Minimum Contract Capacity unless directed by the NMPRC. If requested by Seller within thirty (30) days prior to the Target Operational Period Commencement Date, EPE will agree to support a filing that seeks an NMPRC determination on whether EPE shall accept commencement of the Operational Period for the Project with an amount less than the Minimum Contract Capacity.

If the Operational Period Commencement Date has not occurred by the date that is ninety (90) days after the Target Operational Period Commencement Date, unless Seller has timely requested NMPRC relief as provided in the preceding paragraph, EPE may terminate this Statement of Work by written notice to Seller. If Seller has timely requested NMPRC relief as provided in the preceding paragraph, EPE agrees to not exercise its termination right until such time as any NMPRC proceeding regarding the requested relief is concluded or dismissed. If EPE elects to terminate this Statement of Work as provided in this paragraph, neither Seller nor EPE shall have any further obligation or liability to each other hereunder.

If the Operational Period commences with a Project capacity at less than the Target Contract Capacity, EPE will allow for an additional twelve (12) month period for the Seller to commission any identified Sites that are in development related to the Project and in which the Seller has a binding commercial agreement with a home developer and/or builder.

If the Operational Period commences with a Project capacity at less than the Target Contract Capacity, the Seller and EPE shall agree in writing on the initial Contract Capacity for purposes of payment of the Contract Capacity Price and Performance Guarantees, as such Contract Capacity may be adjusted pursuant to the preceding paragraph and the procedures set forth in Performance Guarantee Addendum attached hereto.

ACAP Pricing Table

Statement of Work – Number 2	
Deployment Period (Months)	24
Operational Period (Years)	30
Customer Sites	250 (estimate)
DER Sites	Up to 1
Target Contract Capacity (MW)	5.125
Minimum Contract Capacity (MW)	1.000
Contract Capacity Price ($/kW-year)	$320.00
Price Escalation begins 1 year after the SOW Effective Date	2% per annum
ACAP for Customer Site (kW)	20.5
DR for Customer Site (kW)	5
ACAP for DER Site (kW)	To be determined based on further discussions and agreement between EPE and Seller.
Production Reservation Price for DER Sites ($/kW)	N/A

Performance Guarantees & Utility Portal Operability

1. Performance Guarantees and associated provisions regarding testing and remedies (including Performance Guarantee Payments) are provided in the Performance Guarantee Addendum included as an attachment to this Statement of Work. Seller’s aggregate liability to EPE for Performance Guarantee Payments under this Statement of Work shall be limited to One Hundred Fifty Thousand dollars ($150,000) for each Operational Year (as defined in the Performance Guarantee Addendum).

2. If a malfunction of the Utility Portal occurs that is not caused by EPE, including any breach by EPE under the Agreement, and such malfunction results in the Utility Portal being fully or materially inaccessible to EPE for a period exceeding twenty-four (24) hours and causes the Project not to be dispatched according to EPE direction (the “Inaccessibility Period”), these hours shall be included in the Unavailable Hours calculation as described in the Performance Guarantee Addendum and shall be subject to the remedies as provided therein. If the Inaccessibility Period continues for more than ninety (90) consecutive days, EPE may terminate this Statement of Work pursuant to Section 14.1(b) of the Agreement.

3. The Parties recognize the demonstration nature of the Project and agree to work collaboratively and in good faith to evaluate the effectiveness of the processes and procedures set forth in the Performance Guarantee Addendum. Based on lessons learned in the administration of this Statement of Work, the Parties shall reasonably consider and implement mutually agreed revisions to such processes and procedures, which will be memorialized in writing through amendments to the Performance Guarantee Addendum.

Security Fund

Seller must establish a Security Fund in favor of EPE for this Project, as provided in Section 1.7 of the Agreement and as set forth below.

(1) No later than thirty (30) days following the commencement of the Deployment Period (as revised below for purposes of this Statement of Work), the Security Fund must be established in favor of EPE in the amount of Fifty Thousand Dollars ($50,000).

(2) No later than five (5) Business Days following the commencement of the Operational Period, the Security Fund must be increased to a total amount calculated as the sum of Fifty Thousand Dollars ($50,000) plus Twenty Thousand Dollars ($20,000) for every fifty (50) Commissioned and Accepted Sites.

Seller shall replenish the Security Fund to the required amount set forth above within five (5) Business Days after any draw on the Security Fund by EPE.

Failure of Seller to comply with the Security Fund provisions of this Statement of Work is a material breach of this Statement of Work, affording EPE the right to terminate this Statement of Work pursuant to Section 14.1(a)(2)) of the Agreement, subject to the cure rights set forth therein.

The Security Fund will survive termination or expiration of this Statement of Work for a period of up to one year to be available to pay any amounts owed to EPE arising prior to or upon expiration or termination. Thereafter, EPE will determine the amount, if any, owed by Seller for any obligations or damages arising out of this Statement of Work. EPE may draw such amount and the remaining balance in the Security Fund will be automatically released (including any accumulated interest, if applicable) to Seller.

Other Provisions

1. For purposes of this Statement of Work only, the defined term “Contract Capacity Deployed” within the Agreement is revised to state as follows:

"Contract Capacity Deployed" means the total ACAP installed under a Statement of Work, which may not exceed the Target Contract Capacity by more than five percent (5%) unless mutually agreed by the Parties.

2. For purposes of this Statement of Work only, the defined term "Deployment Period" within the Agreement is revised to state as follows:

"Deployment Period" means the period of time commencing upon satisfaction or written waiver by Purchaser of all "Conditions Precedent to Effectiveness" set forth in the Statement of Work and ending on the Operational Period Commencement Date. The estimated Deployment Period is set forth in the ACAP Pricing Table.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Statement of Work has been duly executed and delivered by the duly authorized officer of each Party as of the SOW Execution Date.

<u>Seller</u>:	**<u>Purchaser</u>**:
CREATION ENERGY LLC	**EL PASO ELECTRIC COMPANY**
DocuSigned by:	Signed by:
By: Chris Hickman ____________	By: Kelly Tomblin ____________
64E4D297A6F24BF...	093BDB364213489...
Chris Hickman	Kelly A. Tomblin
CEO	President & CEO

PERFORMANCE GUARANTEE ADDENDUM

Statement of Work 2

DEFINITIONS

Capitalized terms not otherwise defined herein shall have the meaning as set forth in the Agreement or accompanying Statement of Work. The following defined terms used herein have the meanings set forth below:

"Annual Performance Report" is a report delivered annually by the Seller to EPE, as described in Section 1(a)(ii) below.

"Annual Performance Guarantee Assessment Report" is a report annually by the Seller to EPE detailing Performance Guarantee Payments owed by Seller to EPE, as described in Section 1(b) below.

"Available Hours" means for each Operational Year, an amount of hours equal to (a) the number of Period Hours in such Operational Year, minus (b) the aggregate Unavailable Hours in such Operational Year.

"Charging Energy" means all energy directly supplied by EPE at the Point of Delivery.

"Demand Response Damages" is a form of Performance Guarantee Payment owed by Seller to EPE, and has the meaning set forth in Section 2(e).

"Demand Response Guarantee" has the meaning set forth in Section 2(e).

"Demand Response Test" has the meaning set forth in Section 2(e).

"Discharging Energy" means all energy discharged by the Project less inverter, transformation and transmission losses, if any, measured at the Point of Delivery.

"Excused Hours" means, in any Operational Year, those hours during which Seller is unable to receive Charging Energy or deliver Discharging Energy as a result of: (a) curtailments of the Project directed by EPE or any Governmental Authority (but only to the extent such curtailment was not due to Seller's failure to comply with the Agreement, any Interconnection Agreement related to the Project, this Statement of Work, or Seller's failure to observe prudent utility practices); (b) Force Majeure; (c) distribution system outages; (d) grid voltage at or below zero volts at any Site comprising the Project; and (e) EPE's failure to perform its obligations under the Agreement.

"Operational Year" means each twelve (12) month period beginning on the Operational Period Commencement Date.

"Performance Guarantees" means each of the Solar Rating Guarantee, Storage Capacity Guarantee, Storage Roundtrip Efficiency Guarantee, Storage

Availability Guarantee, and Signal Response Guarantee.

"Performance Guarantee Audit" is a request from EPE to the Seller within a month of receipt of an Annual Performance Report to test and report on any or all of the Performance Guarantees per the applicable testing procedures as described within.

"Period Hours" means the actual number of hours in a given Operational Year or partial Operational Year, being either eight thousand seven hundred sixty (8,760) or eight thousand seven hundred eighty four (8,784) in each full Operational Year, as applicable.

"Point of Delivery" means the point of measurement as defined in interconnection one-line diagram in Exhibit M of the Agreement.

"Signal Response" means any or both of the Ramp Time and Response Time for the Project, as set forth in the Agreement.

"Signal Response Damages" is a form of Performance Guarantee Payment owed by Seller to EPE, and has the meaning set forth in Section 2(f).

"Signal Response Guarantee" has the meaning set forth in Section 2(f).

"Solar Degradation Curve" is the performance degradation of solar resource per the schedule set forth in Exhibit A.

"Solar Delivered Energy" means the energy delivered from the Project as measured at the Point of Delivery, and as reported in the Annual Performance Report.

"Solar P90 Adjustment Factor" has the meaning set forth in Section 2(a).

"Solar Rating" has the meaning as determined in Section 2(a).

"Solar Rating Payment Rate" means the amount set forth in Section 2(a).

"Solar Rating Damages" is a form of Performance Guarantee Payment owed by Seller to EPE, and has the meaning set forth in Section 2(a).

"Solar Rating Guarantee" has the meaning set forth in Section 2(a).

"SoC" means state of charge.

"Storage Availability" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Available Hours divided by (ii) the sum of all Period Hours in the relevant Operational Year, and shall include the storage of all Sites comprising the Project.

"Storage Availability Damages" is a form of Performance Guarantee Payment owed by Seller to EPE, and has the meaning set forth in Attachment 2.

"Storage Availability Guarantee" has the meaning set forth in Section 2(c).

"Storage Capacity Damages" is a form of Performance Guarantee Payment owed by Seller to EPE, and has the meaning set forth in Attachment 1.

"Storage Capacity Guarantee" has the meaning set forth in Section 2(b).

"Storage Capacity Rating" has the meaning set forth in Attachment 1.

"Storage Capacity Test" means the test performed to measure the Contract Capacity of the Project against the Storage Capacity Guarantee, as described in Attachment 1.

"Storage Capacity Testing Report" has the meaning set forth in Attachment 1.

"Storage Roundtrip Efficiency," or "Storage RTE," means, in respect of a specified period of time, the ratio (expressed as a percentage) of (a) the total amount of energy (in kWh) discharged from the Project during such period of time and (b) the total amount of energy (in kWh) charged to the Project during such period of time.

"Storage Roundtrip Efficiency Guarantee" has the meaning set forth in Section 2(d).

"Storage RTE Damages" is a form of Performance Guarantee Payment owed by Seller to EPE, and has the meaning set forth in Attachment 3.

"Storage RTE Test" has the meaning set forth in Attachment 3.

"Storage RTE Testing Report" has the meaning set forth in Attachment 3.

"Total Annual Performance Guarantee Payment" means the total Performance Guarantee Payment owed by Seller to EPE for an Operational Year, equal to the sum of Solar Rating Damages, Storage Availability Damages, Storage Capacity Damages, Storage RTE Damages, Demand Response Damages, and Signal Response Damages.

"Unavailable Hours" means those hours, other than Excused Hours, that the Utility Portal is not functioning, the Utility Portal is inaccessible by EPE, or the Project is otherwise unable to receive Charging Energy or deliver Discharging Energy; provided, that a nonoperational status, or inability to deliver Discharging Energy or accept Charging Energy, including any derate of the Project, malfunctioning or other non-accessibility of the Utility Portal, or other unavailability affecting part of the Project will count as an equivalent percentage of the applicable hour(s) for the calculation of Unavailable Hours.

1. SELLER'S REPORTING AND COMPLIANCE

(a) Seller will report to EPE on the operations of the Project in the following manner:

(i) Within thirty (30) days following the end of each calendar month, Seller will deliver to EPE a monthly progress report that provides a summary of the Project's performance for the prior month and a description of any materially adverse circumstances that Seller encountered.

(ii) Within ninety (90) days following the end of each Operational Year, Seller will deliver to EPE an annual performance report that summarizes performance of the Project for the prior Operational Year, including for each performance criteria subject to a Performance Guarantee (the "Annual Performance Report").

(b) EPE will have the option to request a Performance Guarantee Audit within a month of receipt of the Annual Performance Report, or upon any time Seller demonstrates a materially adverse circumstance in a monthly progress report. If the request for a Performance Guarantee Audit occurs during a Force Majeure event, the Parties will wait until the end of the Force Majeure event to commence the Performance Guarantee Audit. The Performance Guarantee Audit will consist of the following tests performed by Seller:

(i) A Storage Capacity Test and Storage RTE Test, as outlined further in Attachments 1 and 3;

(ii) A Demand Response Test, as outlined in Section 2(e) below; and

(iii) A Signal Response test, as outlined in Section 2(f) below.

Within (a) twenty (20) days after delivery of the Annual Performance Report (if no Performance Guarantee Audit is requested) or (b) twenty (20) days after completion of a Performance Guarantee Audit (if one is requested), the Seller will provide EPE an Annual Performance Guarantee Assessment Report (the "Annual Performance Guarantee Assessment Report"). The Annual Performance Guarantee Assessment Report will outline the Total Annual Performance Guarantee Payment owed by the Seller to EPE for the applicable Operational Year. The Total Annual Performance Guarantee Payment in any Operational Year will be capped at the amount set forth in this Statement of Work.

(c) Within twenty (20) days of the Annual Performance Guarantee Assessment Report, Seller shall pay to EPE, by wire transfer of immediately available funds to an account specified in writing by EPE or by any other means agreed to by the

Parties in writing from time to time, the Total Annual Performance Guarantee Payment.

2. PERFORMANCE GUARANTEES

(a) Solar Rating Guarantee. Seller shall be required to deliver to EPE no less than the Solar Rating during each Operational Year (the "Solar Rating Guarantee"). The Solar Rating of the Project is defined as the summation of the Solar Rating for all Commissioned and Accepted Sites.

The Solar Rating will be calculated using the National Laboratory of the Rockies (NLR) PVWatts® P50 Calculator output that considers a Site's latitude and longitude and solar azimuth, and adjusted using a Solar P90 Adjustment Factor and Solar Degradation Curve. A representation of this output can be found in Exhibit A.

(i) Solar azimuth will consider the following: 0 degree (North), 45 degree, 90 degree, 135 degree, 180 degree (South), 225 degree, 270 degree, and 315 degree orientation. The Site's solar azimuth and the latitude and longitude will be noted on each Commissioning Certificate and will be included when using NLR's PVWatts Calculator.

(ii) Solar P90 Adjustment Factor is 96% of the NLR's PVWatts® P50 Calculator output.

(iii) An adjustment will be made for Excused Hours during each Operational Year.

(iv) An adjustment will be made based on the Solar Degradation Curve outlined in Exhibit A for each Site based on its Commissioned and Accepted date.

If Seller delivers less than 90% of the Solar Rating for the Project in any Operational Year, it will pay to EPE Solar Rating Damages calculated as the Solar Rating less the Solar Delivered Energy times the Solar Rating Payment Rate. The Solar Rating Payment Rate shall be 0.04/kWh.

If Seller fails to deliver more than 70% of Solar Rating for two or more consecutive Operational Years (the "Solar Rating Default Threshold"), EPE will have the option to exercise its right to terminate this Statement of Work as provided in Section 14.1(b) of the Agreement, provided, however, that if EPE does not exercise its termination right under this paragraph within ninety (90) days following receipt of the Annual Performance Report demonstrating that the Solar Rating Default Threshold was triggered, EPE's right to terminate the Statement of Work will expire until receipt of the next Annual Performance Report demonstrating a Solar Rating that triggers the Solar Rating Default Threshold, which, for the avoidance of doubt, could be the next Operational Year.

(b) Storage Capacity Guarantee. The Storage Capacity Guarantee for the Project each Operational Year is 100% of the Storage Capacity Rating, as such Storage Capacity Rating may be adjusted as provided in Attachment 1 (the "Storage Capacity Guarantee") and Exhibit B. The Storage Capacity testing procedures and calculation of the Storage Capacity Damages are outlined in Attachment 1.

If Seller fails to average more than 80% of the Storage Capacity Guarantee for two or more consecutive Operational Years (the "Storage Capacity Default Threshold"), EPE will have the option to exercise its right to terminate this Statement of Work as provided in Section 14.1(b) of the Agreement, provided, however, that if EPE does not exercise its termination right under this paragraph within ninety (90) days following receipt of the Annual Performance Report demonstrating that the Storage Capacity Default Threshold was triggered, EPE's right to terminate the Statement of Work will expire until receipt of the next Annual Performance Report that demonstrates the Storage Capacity Default Threshold was triggered, which, for the avoidance of doubt, could be the next Operational Year.

(c) Storage Availability. The Storage Availability Guarantee for the Project each Operational Year shall be 90% (the "Storage Availability Guarantee"). The calculation for Storage Availability Damages is outlined as Attachment 2.

If Seller fails to deliver more than 80% of the Storage Availability Guarantee for two consecutive Operational Years (the "Storage Availability Default Threshold"), EPE will have the option to exercise its right to terminate this Statement of Work as provided in Section 14.1(b) of the Agreement, provided, however, that if EPE does not exercise its termination right under this paragraph within ninety (90) days following receipt of the Annual Performance Report demonstrating that the Storage Availability Default Threshold was triggered, EPE's right to terminate the Statement of Work will expire until receipt of the next Annual Performance Report that demonstrates the Storage Availability Default Threshold was triggered, which, for the avoidance of doubt, could be the next Operational Year.

(d) Storage Roundtrip Efficiency. The Storage Roundtrip Efficiency Guarantee for the Project is 80% (the "Storage Roundtrip Efficiency Guarantee"). The Storage RTE Test procedures and the calculation for Storage RTE Damages are outlined in Attachment 3.

If Seller fails to achieve the Storage Roundtrip Efficiency Guarantee for two consecutive Operational Years (the "Storage Roundtrip Efficiency Default Threshold"), EPE will have the option to exercise its right to terminate this Statement of Work as provided in Section 14.1(b) of the Agreement, provided, however, that if EPE does not exercise its termination right under this paragraph within ninety (90) days following receipt of the Annual Performance Report demonstrating that the Storage Roundtrip Efficiency Default Threshold was triggered, EPE's right to terminate the Statement of Work will expire until receipt of the next Annual Performance Report that demonstrates the Storage Roundtrip Efficiency Default Threshold was triggered, which, for the avoidance of doubt, could be the next Operational Year.

(e) Demand Response. Seller guarantees the performance and availability for scheduling in the Utility Portal of at least 5kW of Demand Response per Site comprising the Project based on Ambient Temperature and as an aggregated total across the Project (the "Demand Response Guarantee"). For purposes of determining compliance with the Demand Response Guarantee, HVAC has a deemed measure of 5kW, Hot Water Heater has a deemed measure of 3kW, and other loads have a deemed measure of the kW that was recorded and eliminated prior to the start of an event.

Demand Response Damages will be calculated as the kW shortfall between the results of the Demand Response Test for the Project and the Demand Response Guarantee for the Project, multiplied by $75 ("Demand Response Damages").

Example Calculation:
Assumption: The Project consists of 250 homes.

Demand Response Guarantee = 250 x 5kW = 1250kW
Demond Response Test results = 1000kW
Demand Response Damages = 250kW shortfall x $75/kW = $18,750.00

The Demand Response Test will last for a duration of four (4) hours with the results being calculated per the following (the "Demand Response Test"):

(i) For HVAC, 5kW during the test for HVAC verified off. HVAC Demand Response is available when Ambient Temperature is above 80 degrees Fahrenheit or below 60 degrees Fahrenheit.

(ii) For Hot Water Heater, 3kW during the test for Hot Water verified off.

(iii) For other loads, the kW of the load identified and recorded at the Customer Site (not including HVAC and Hot Water Heater) immediately prior to the test and verified off during test.

(iv) Seller may retest in its sole discretion.

(f) Signal Response. The Signal Response Guarantee for the Project is both (a) a Ramp Time of three (3) minutes, and (b) a Response Time of ten (10) minutes (the "Signal Response Guarantee").

If a Performance Guarantee Audit is requested, Seller shall schedule and complete a test of the Signal Response for one or both of the Ramp Time and Response Time, as requested by EPE. EPE shall have the right to require a retest of the Signal Response at any time upon five (5) Business Days prior written notice to Seller if EPE reasonably believes that the Signal Response has varied materially from the results of the most recent test of Signal Response. EPE shall have the right to witness any Signal Response test. All costs of a Signal Response test shall be borne by Seller. Seller may retest in its sole discretion. No later than five (5) Business Days following any Signal Response test, Seller shall deliver a testing report to EPE detailing the results and findings, including reasonable supporting data.

If Seller fails to satisfy the Signal Response Guarantee ("Signal Response Deficit"), then Seller shall be obligated to promptly take appropriate corrective actions as required to meet the Signal Response Guarantee, and Seller shall pay EPE Signal Response Damages of Ten Thousand Dollars ($10,000) (the "Signal Response Damages").

If a Signal Response Deficit is calculated at less than 50% of the Signal Response Guarantee (for either or both of the Ramp Time or Response Time), Seller shall have ninety (90) days following such test to restore the Project's Signal Response to at least the levels of the Signal Response Guarantee. If Seller fails to demonstrate restoration of the Signal Response to the Signal Response Guarantee within such ninety (90) day period, then, in addition to Signal Response Damages, EPE may terminate this Statement of Work pursuant to Section 14.1(b) of the Agreement.

EXHIBIT A -
SOLAR DEGRADATION CURVE SCHEDULE AND REPRESENTATIVE SITE SOLAR RATING TABLE

Solar Degradation Curve

Years since Comissioned and Accepted Date	Degradation Curve
1	99.00%
2	98.60%
3	98.10%
4	97.70%
5	97.20%
6	96.80%
7	96.30%
8	95.90%
9	95.40%
10	95.00%
11	94.50%
12	94.10%
13	93.60%
14	93.20%
15	92.70%
16	92.30%
17	91.80%
18	91.40%
19	90.90%
20	90.50%
21	90.00%
22	89.60%
23	89.10%
24	88.70%
25	88.20%
26	87.80%
27	87.30%
28	86.90%
29	86.40%
30	86.00%
30+	85.00%

Solar Rating Table for 20 kW Array by Azimuth per NLR PV Watts

Azimuth	20kW - P50	20kW - P90
0 (North)	25,634	24,545
45	27,631	26,456
90	31,349	30,017
135	34,446	32,982
180 (South)	35,518	34,008
225	33,992	32,547
270	30,709	29,404
315	27,170	26,016

Sample Calculation for Solar Rating

Multiply the 20kW P90 rating by the Operational Year Degradation Percentage

Count of Sites	Azimuth	20kW NRL PVWatts	Year 1 Solar Rating	Year 2 Solar Rating	Year 3 Solar Rating	Year 4 Solar Rating	Year 5 Solar Rating	Year 6 Solar Rating	Year 7 Solar Rating	Year 8 Solar Rating	Year 9 Solar Rating	Year 10 Solar Rating
5	0 (North)	24,545	24,299	24,201	24,078	23,980	23,857	23,759	23,636	23,538	23,415	23,317
8	45	26,456	26,192	26,086	25,954	25,848	25,716	25,610	25,478	25,372	25,239	25,134
25	90	30,017	29,716	29,596	29,446	29,326	29,176	29,056	28,906	28,786	28,636	28,516
40	135	32,982	32,652	32,520	32,355	32,223	32,058	31,927	31,762	31,630	31,465	31,333
110	180 (South)	34,008	33,668	33,532	33,362	33,226	33,056	32,920	32,750	32,614	32,444	32,308
40	225	32,547	32,222	32,091	31,929	31,798	31,636	31,506	31,343	31,213	31,050	30,920
15	270	29,404	29,110	28,992	28,845	28,728	28,581	28,463	28,316	28,198	28,051	27,934
7	315	26,016	25,756	25,651	25,521	25,417	25,287	25,183	25,053	24,949	24,819	24,715
250												

EXHIBIT B
EXPECTED SITE STORAGE FACILITY PERFORMANCE

Years Since Comissioned and Accepted Date	Storage Capacity Rating Guarantee (kW_{AC}) per Customer Site[1]	Site Storage Energy Capacity *(kWh_{AC})*
1	5.76	46.08
2	5.52	44.13
3	5.37	42.97
4	5.25	41.97
5	5.13	41.06
6	5.03	40.20
7	4.93	39.40
8	4.83	38.63
9	4.74	37.88
10	4.65	37.16
11	4.56	36.46
12	4.47	35.78
13	4.39	35.11
14	4.31	34.44
15	4.22	33.78
16	4.14	33.11
17	5.76	46.08
18	5.52	44.13
19	5.37	42.97
20	5.25	41.97
21	5.13	41.06
22	5.03	40.20
23	4.93	39.40
24	4.83	38.63
25	4.74	37.88
26	4.65	37.16
27	4.56	36.46
28	4.47	35.78
29	4.39	35.11
30	4.31	34.44
30+	4.19	33.50

[1]For DER Sites this table shall be part of the Commissioning Certificate

Attachment 1 -
STORAGE CAPACITY TESTING, STORAGE CAPACITY GUARANTEE, AND STORAGE CAPACITY DAMAGES

A. Storage Capacity Test.

1. Testing. If a Performance Guarantee Audit is requested, Seller shall schedule and complete a Storage Capacity Test. EPE shall have the right to require a retest of the Storage Capacity Test at any time upon five (5) Business Days prior written notice to Seller if EPE reasonably believes that the Contract Capacity has varied materially from the results of the most recent Storage Capacity Test.

2. Witnessing Test; Costs and Expenses. EPE shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. All costs of a Storage Capacity Test shall be borne by Seller.

3. Test Results. No later than five (5) Business Days following any Storage Capacity Test, Seller shall deliver a testing report to EPE detailing results and findings of the Storage Capacity Test (the "Storage Capacity Testing Report"), including reasonable supporting data. The Storage Capacity Testing Report shall include meter readings and log sheets verifying the operating conditions and output of each Site comprising the Project. If the actual Storage Capacity Rating for the Project determined pursuant to a Storage Capacity Test is less than or greater than the then current Storage Capacity Rating, then the actual Storage Capacity Rating determined pursuant to such Storage Capacity Test shall become the new Storage Capacity Rating at the beginning of the day following the completion of such Storage Capacity Test for all purposes under this Statement of Work until a Storage Capacity Rating is determined pursuant to a subsequent Storage Capacity Test in accordance with the terms of this Statement of Work, provided, however, that in no event shall the Storage Capacity Rating be deemed greater than the Storage Capacity Guarantee.

B. Storage Capacity Test Procedures.

Seller will perform each Storage Capacity Test in the following manner and utilize the following steps:

1. Seller may conduct any pre-capacity test activities required or recommended by the equipment suppliers prior to commencing step 2 below.

2. Seller will fully charge the Project so that it is in a state that it is made commonly and typically available to EPE as fully charged and dispatchable. Depending on the equipment supplier, this figure may be when the SoC is at or near 100% as indicated in the Utility Portal.

3. Seller shall select the appropriate operating mode for the Project matching normal, dispatchable operation.

4. Seller will discharge the Project at the higher of full capacity or the Storage Capacity Rating, over a duration of eight (8) consecutive hours. In the event discharging must be stopped early due to the Project having been fully discharged or due to critically low SoC or other safety and stability reasons, Seller will have been deemed to fail the test and Seller and EPE will mutually agree on changes to the test for the purposes of running a re-test.

5. Seller will add the quantity of kWh discharged by the Project during the eight (8) consecutive hours to produce a sum quantity of kWh for the eight (8) consecutive hours full discharge of the Project.

6. Seller will divide the sum quantity of kWh discharged over the eight (8) consecutive hours full discharge of the Project by a factor of eight (8) to produce a value that will become the updated Storage Capacity Rating for purposes of the Statement of Work.

   Example, assuming an 8-hour duration battery resource:

   Hour 1 Discharge = [5,000] kWh
   Hour 2 Discharge = [5,000] kWh
   Hour 3 Discharge = [5,000] kWh
   Hour 4 Discharge = [5,000] kWh
   Hour 5 Discharge = [5,000] kWh
   Hour 6 Discharge = [5,000] kWh
   Hour 7 Discharge = [5,000] kWh
   Hour 8 Discharge = [5,000] kWh
   Duration = 8-hour discharge

   Storage Capacity = [5,000] + [5,000] + [5,000] + [5,000] + [5,000] + [5,000] + [5,000] + [5,000] = [40,000] kWh

   Storage Capacity Rating = [40,000] kWh / 8 hours = [5,000] kW

7. Seller will complete the Project rest period, as applicable according to equipment supplier specifications. Seller will return the Project to the SoC specified by the equipment supplier for standby operations.

8. Each Storage Capacity Test shall be conducted under environmental conditions contemplated in Seller's design specifications and deemed to be appropriate by the equipment manufacturers. Either Party shall have the right to cancel a

Storage Capacity Test if it can be shown that test conditions or other reasons are causing erroneous data. Any cancelled Storage Capacity Test shall not be deemed to have been successfully run.

C. Storage Capacity Damages.

1. If the Storage Capacity Rating of the Project determined as a result of the Storage Capacity Test is less than the Storage Capacity Guarantee, then Seller shall be liable to pay EPE liquidated damages ("Storage Capacity Damages") equal to the product of:

a) The minimum of (i) number of months between the failed Storage Capacity Test and the most recent prior Storage Capacity Test and (ii) 12

Multiplied by

b) The difference between the Storage Capacity Guarantee and the updated Storage Capacity Rating

Multiplied by

c) The Contract Capacity Price

Attachment 2 -
STORAGE AVAILABILITY GUARANTEE

A. Calculation of Storage Availability. Seller shall calculate Storage Availability as part of the Annual Performance Report.

B. Calculation of Storage Availability Damages. If the Storage Availability for any Operational Year is less than the Storage Availability Guarantee, then Seller shall be liable to pay EPE liquidated damages ("Storage Availability Damages"). Storage Availability Damages for an Operational Year shall be equal to the product of the following:

The positive difference between the Storage Availability Guarantee and the actual Storage Availability for the Operational Year (expressed as a decimal)

Multiplied by

The then applicable Storage Capacity Rating (expressed in kW)

Multiplied by

the Contract Capacity Price

Attachment 3 -
STORAGE ROUNDTRIP EFFICIENCY GUARANTEE

A. Storage Roundtrip Efficiency (RTE) Test.

1. Testing. If a Performance Guarantee Audit is requested, Seller shall schedule and complete a Storage RTE Test. EPE shall have the right to require a retest of the Storage RTE at any time upon five (5) Business Days prior written notice to Seller if EPE reasonably believes that the Storage RTE has varied materially from the results of the most recent Storage RTE Test. Seller may retest in its sole discretion.

2. Witnessing Test; Costs and Expenses. EPE shall have the right to send one or more representative(s) to witness all Storage RTE Tests. All costs of a Storage RTE Test shall be borne by Seller.

3. Test Results. No later than five (5) Business Days following any Storage RTE Test, Seller shall deliver a testing report to EPE detailing results and findings of the Storage RTE Test (the "Storage RTE Testing Report"), including reasonable supporting data. The Storage RTE Testing Report shall include meter readings and log sheets verifying the operating conditions and output of each Site comprising the Project.

B. Storage Roundtrip Efficiency (RTE) Test Procedures.

Each Storage RTE Test will be performed in the following manner and utilizing the following steps:

1. Seller may conduct any pre-capacity test activities required or recommended by the equipment suppliers prior to commencing step 2 below.

2. Seller will fully discharge each Site comprising the Project to the minimum recommended SoC which, subject to equipment manufacturer specifications, will be at 20% as registered in the Utility Portal.

3. The Parties will agree upon and select the appropriate operating mode.

4. Seller will deliver the Storage Capacity Rating over eight (8) hours.

5. Seller will charge each Site comprising the Project to the maximum SoC which, subject to equipment manufacturer specifications, will be at 100% as registered in the Utility Portal.

6. Seller will review the metering point data and determine and record the

"EnergyIN," which is the amount of energy used to charge a Site from minimum SoC to maximum SoC.

7. Seller will discharge the Project according to the Storage Capacity Test procedures set forth in Attachment 1 for the full eight (8) hours and not cease discharging until each Site has reached the lower of (a) a 20% minimum SoC, and (b) occurrence of a critically low SoC, power foldbacks, or other safety and system stability event.

8. Seller will review the metering point data, and determine and record the "EnergyOUT," which is the amount of energy used to discharge each Site from maximum SoC to minimum SoC.

9. Seller shall return the SoC of each Site to within the range specified by the equipment manufacturer for standby operations.

C. Storage RTE Damages and Invoicing.

If Storage RTE determined as a result of the Storage RTE Test is less than the Storage Roundtrip Efficiency Guarantee, then Seller shall pay EPE liquidated damages ("Storage RTE Damages"). Storage RTE Damages for such Operational Year shall be equal to the product of the following:

The positive difference between "Actual RTE" and the Storage Roundtrip Efficiency Guarantee (where "Actual RTE" is equal to the quotient of "EnergyOUT" divided by "EnergyIN," and where "EnergyOUT" is defined in Section B.8 of this Attachment and "EnergyIN" is defined in Section B.6 of this Attachment)

Multiplied by

The then applicable Storage Capacity Rating;

Multiplied by

The then-applicable cost of Charging Energy;

Multiplied by

The minimum of (i) number of months between most recent prior Storage RTE Test and (ii) 12

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT	)	**Case No. 26-00___**
EL PASO ELECTRIC COMPANY, Applicant.	)	

DECLARATION OF DAVID C. HAWKINS IN SUPPORT OF THE FOREGOING DIRECT TESTIMONY TO THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT

I, ***David C. Hawkins***, pursuant to Rule 1-011 NMRA, state as follows:

1. I affirm in writing under penalty of perjury under the laws of the State of New Mexico that the following statements are true and correct.

2. I am over 18 years of age and have personal knowledge of the facts stated herein. I am employed by El Paso Electric Company ("EPE" or "the Company") as the *Vice President of Operations Support.*

3. The foregoing Direct Testimony of David C. Hawkins, together with all exhibits sponsored therein and attached thereto, is true and accurate based on my knowledge and belief.

4. I submit this Declaration, based upon my personal knowledge and upon information and belief, in support of EPE's ***Application to Implement a Demand Response and Distributed Energy Resource Pilot Project.***

FURTHER, DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 20, 2026.

/s/ David C. Hawkins
DAVID C. HAWKINS

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO IMPLEMENT A DEMAND RESPONSE AND DISTRIBUTED ENERGY RESOURCE PILOT PROJECT

Case No. 26-00000XX

EL PASO ELECTRIC COMPANY,
Applicant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 20, 2026, **El Paso Electric Company's Application for Approval to Implement a Demand Response and Distributed Energy Resource Pilot Project** was emailed to each of the following, which includes the Attorney General's Office and all counsel of record and pro se parties in EPE's last rate case:

EPE Regional Management	EPE_Reg_Mgmt@epelectric.com;
Nancy Burns	nancy.burns@epelectric.com;
Jeffrey J. Wechsler	jwechsler@spencerfane.com;
Kari A. Olson	kaolson@spencerfane.com;
Creighton R. McMurray	cmcmurray@spencerfane.com;
Yolanda Sandoval	ysandoval@spencerfane.com;
Teresa Pacheco	tpacheco@spencerfane.com;
Anastasia Stevens	astevens.law@gmail.com;
Brad Douglas	bdouglas@lascruces.gov;
Andrea Crane	ctcolumbia@aol.com;
Philip Simpson	philipbsimpson@comcast.net
Keith Herrmann	kherrmann@stelznerlaw.com;
Rockney D. Bacchus	rockybacchus@gmail.com;
Kyle J. Smith	kyle.j.smith124.civ@army.mil;
Merrie Lee Soules	mlsoules@hotmail.com;
Chris Leger	chris@interwest.org;
Remy Franklin	remy@interwest.org;
Joan E. Drake	jdrake@modrall.com;
Cydney Beadles	cydney.beadles@westernresources.org;
Cara Lynch	lynch.cara.nm@gmail.com;
John Bogatko	john.bogatko@prc.nm.gov;
Ed Rilkoff	ed.rilkoff@prc.nm.gov;
Russell Fisk	russell.fisk@prc.nm.gov;
Cathy Boies	cboies@gridworks.org;
Stephen Fischmann	stephen.fischmann@gmail.com;
Randy Rankin	randy.rankin@sustainableeng.energy;
NMDOJ Utilities Division	utilityfilings@nmdoj.gov;
Evan Crocker	ecrocker@nmdoj.gov;
Maria Oropeza	moropeza@nmdoj.gov;
Nicole Teupell	nteupell@nmdoj.gov;
Arthur O'Donnell	arthur.o'donnell@prc.nm.gov;

DATED April 20, 2026

/s/ Kari E. Olson
Kari E. Olson