

**EL PASO ELECTRIC COMPANY  
FIRST REVISED SAMPLE FORM NO. 43**

**COMMUNITY SOLAR SUBSCRIBER  
ORGANIZATION AGREEMENT**

**X**

**PAGE 1 OF 1**

**(SEE ATTACHMENT)**

**Advice Notice No. 311**

**Signature/Title /s/ James Schichtl**

**James Schichtl  
Vice President - Customer and  
Regulatory Solutions**

**COMMUNITY SOLAR SUBSCRIBER ORGANIZATION AGREEMENT****SOLAR FACILITY**

This Community Solar Subscriber Organization Agreement ("**Agreement**"), as may be amended from time to time, is entered into this \_\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_ ("**Execution Date**"), by and between El Paso Electric Company, a Texas corporation authorized to transact business in New Mexico ("**Company**"), whose principal place of business is 100 N. Stanton, El Paso, Texas 79901, and \_\_\_\_\_ ("**Subscriber Organization**"), whose principal place of business is \_\_\_\_\_. Company and Subscriber Organization may be referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, Subscriber Organization desires to develop, design, construct, own and operate (or is acting as an authorized agent of the Project Owner (defined below)) a community solar facility within the meaning of the Community Solar Act, NMSA 1978, Sections 62-16B-1 to -8 (2021), together with any rules, regulations, orders or guidance promulgated thereunder with an expected total maximum power output of approximately \_\_\_\_\_ (\_\_\_\_\_) MW *Note: Cannot be more than 5 MW AC* ("**Project**"), as further defined herein and in Exhibit B;

WHEREAS, the Project is a "native community solar project", as defined in the Community Solar Act;

WHEREAS, the Project has been selected by the administrator pursuant to 17.9.573.12 NMAC (the "**Administrator**") and the Subscriber Organization holds a current registration from the NMPRC and has been authorized to operate the Project by the NMPRC in accordance with the Community Solar Act; and

WHEREAS, Subscriber Organization desires to generate, transfer and deliver to Company the Photovoltaic Energy generated by the Project and any and all associated or correlative Renewable Energy Certificates and other Environmental Attributes, and Company agrees to acquire the same from Subscriber Organization, in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

**ARTICLE 1**

## Definitions and Rules of Interpretation

1.1 Definitions. Certain capitalized terms used herein are defined in Exhibit A. Any terms used (whether or not capitalized) but not defined herein shall be construed to have the meanings ascribed to them or reasonably interpreted in light of: (i) the Community Solar Act; (ii) other rules and regulations promulgated by the NMPRC; or (iii) other Applicable Law.

1.2 Native Community Solar Projects. Notwithstanding anything contained herein, to the extent the Community Solar Act provides that any requirements, conditions or provisions thereunder do not apply to a native community solar project, any such requirements, conditions or provisions in this Agreement shall be limited (or eliminated) to the extent required, so that this Agreement shall be read to be consistent with such terms of the Community Solar Act with respect to native community solar projects.

1.3 House Power. This Agreement does not provide for the supply of retail electric power to the Project, for any purpose ("**House Power**"). Subscriber Organization shall contract with Company separately for the supply of House Power or any necessary backfeed power and station service power, including any line

extension, consistent with requirements of the Interconnection Agreement and Applicable Law. Subscriber Organization may not use the energy Subscriber Organization generates by the Project to be consumed by Subscriber Organization. Subscriber Organization may not net-out or use energy it generates by the Project for House Power. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement.

1.4 Project Owner. "**Project Owner**" means the entity or entities holding legal title or otherwise having full rights of ownership in and to the Project, as such entities may change from time to time. If the Project Owner and the Subscriber Organization are not the same Person, then the Subscriber Organization represents and warrants that it has obtained all necessary rights and consents from the Project Owner to enter into this Agreement and the Interconnection Agreement and to convey the Solar Energy Output to the Company. Further, the Subscriber Organization warrants and covenants and shall be responsible for ensuring that the Project Owner complies with and meets all obligations under this Agreement, the Interconnection Agreement, the Interconnection Rules and Applicable Law to the extent that such obligations may need to be performed by or are applicable to the Project Owner in whole or in part. The name and contact information of the Project Owner is set forth in Exhibit D. The Subscriber Organization shall update Exhibit D from time to time for any change in the Project Owner.

## ARTICLE 2

### Term; Project Description

2.1 Execution Date and Term. This Agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time ("**MPT**") on the date that is the last day of the Twenty-Fifth (25<sup>th</sup>) Commercial Operation Year, subject to the early termination provisions set forth herein ("**Term**").

2.2 Commercial Terms. The following commercial terms apply to the transaction contemplated by this Agreement, each term as more fully set forth in this Agreement:

### COMMERCIAL TERMS<sup>1</sup>

<b>Company:</b> El Paso Electric Company	<b>Subscriber Organization:</b> _____
<b>Project:</b> _____	
<b>Point of Delivery:</b> _____ The point where Subscriber Organization makes available to Company and delivers to Company the Photovoltaic Energy output being provided under this Agreement.	
<b>Agreement Term:</b> 25 Years	<b>Solar Capacity (MWs):</b> _____ MW <sub>AC</sub> <i>Enter amount bid</i>
<b>Hours:</b> Hour Ending 0100 – Hour Ending 2400, Monday through Sunday MPT	
<b>Average Annual Generation:</b> _____ megawatt-hours (MWh)	
<b>Day(s) of week:</b> Monday through Sunday, including NERC holidays	

2.3 Project Schedule. No less than sixty (60) days prior to the date upon which Subscriber Organization expects to achieve the Commercial Operation Date, Subscriber Organization shall give written notice to Company of such anticipated Commercial Operation Date for Company's forecasting and resource

<sup>1</sup> NTD: Portions of this table will need to be updated for each agreement.

planning.

2.4 Location. A scaled map that identifies the Site, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit B to this Agreement.

2.5 General Design of the Project. Subscriber Organization shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement (and any related interconnection procedures) and the requirements of the Community Solar Act. For projects greater than one megawatt (AC), no later than the earlier of (i) thirty (30) days following Subscriber Organization's commencement of construction of the Project or (ii) sixty (60) Days prior to issuance of a purchase order for Subscriber Organization's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Subscriber Organization's SCADA or equivalent systems with Company's system. All technologies interfacing directly with Company's network, systems, or assets shall adhere to (i) business-to-business VPN standards, (ii) multi-factor authentication requirements for human logins to web servers, (iii) production change management, and (iv) NERC Critical Infrastructure Protection governance requirements.

2.6 AGC / Curtailment. Prior to the Commercial Operation Date, Subscriber Organization, at its sole cost and expense, shall install any needed AGC telemetry communications interface at the Project. The AGC shall be installed only if the utility system impact study or interconnection process indicates that it is needed based on the specific grid needs at the location of the project. If needed, the Subscriber Organization shall maintain such AGC throughout the Delivery Term capable of controlling the facility's output in the most cost-effective manner mutually agreeable to both parties. Beginning on the Commercial Operation Date, Subscriber Organization shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Subscriber Organization shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. T&D Curtailment shall be allowed for any reason included in the definition of T&D Curtailment. Whenever possible, the Company shall give Subscriber Organization reasonable prior notice of the possibility that there will be T&D Curtailment.

### ARTICLE 3 Delivery and Metering

#### 3.1 Delivery Arrangements.

(A) Subscriber Organization shall secure transmission and/or distribution rights necessary to deliver the Photovoltaic Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement. Except where otherwise provided by Applicable Laws, Subscriber Organization shall be responsible for the costs of interconnection and costs required to deliver the Photovoltaic Energy from the Project to Company at the Point of Delivery at the required voltage, including the costs of any associated network upgrades, transmission and distribution charges, ancillary service charges, electrical losses and any other transfer-related charges.

(B) Company shall be responsible for costs, subject to cost recovery, required to deliver the Photovoltaic Energy from and beyond the Point of Delivery including all necessary transmission or distribution service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond.

#### 3.2 Generation and Energy Delivery Forecasting.

(A) If requested by Company, Subscriber Organization shall provide annual Base Schedule estimates and forecasts of Solar Energy Output broken out by month at least 30 days prior to the beginning of each Commercial Operation Year or as reasonably requested by Company from time to time in accordance with the Program Materials. If the Subscriber Organization reasonably anticipates a material change to the Base Schedule, it shall notify the Company within three business days of the time it knew of

the change. The estimates and forecasts shall identify monthly and annual Solar Energy Output over the following Commercial Operation Year and identify the applicable degradation factor. As reasonably requested by Company, Subscriber Organization shall provide Company with a data link into the forecasting tools used by Subscriber Organization and with all real time measurement parameters of the Project including system availability data made available to Company via a SCADA or equivalent interface.

(B) If requested by Company, Subscriber Organization shall submit to Company its initial monthly schedule for generation and delivery of the Average Annual Generation with execution of this Agreement in the form required per the Program Materials and will update such annual generation forecast at least thirty (30) days prior to the end of each Commercial Operation Year.

3.3 Electric Metering Devices. Company shall install, and thereafter own, operate, maintain and read the Electric Metering Device(s) at the point of interconnection with Company facilities, and Subscriber Organization shall pay for the cost of and installing the Electric Metering Device. Such payment shall be due within thirty (30) days from the date a bill is presented to Subscriber Organization by Company after the Electric Metering Device is installed. If Subscriber Organization does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one-half percent (1.5%) per month. In addition to the foregoing, Subscriber Organization shall pay any and all monthly or other Electric Metering Device charges set forth in the Company's electric tariffs or otherwise generally applied by Company to community solar facilities or distributed energy resources. Company reserves the right to replace the Electric Metering Device as necessary to ensure the accurate measurement of energy provided from the Project to the Company and after reasonable prior notice to the Subscriber Organization.

3.4 Telecommunications Equipment. Subscriber Organization shall cause to be provided, and shall own, operate and maintain at Subscriber Organization's sole cost any necessary electronic communications equipment or devices that are required to provide Company real-time access to interval data regarding the output of the Project, as directed by the Company. Unless otherwise notified in writing by Company that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone and/or data line(s) or some combination thereof capable of transmitting interval data in real-time to Company. If, following the Commercial Operations Date, the telecommunication service required is inactive or non-operational during any Month when Company attempts to access measurement data from the telemetry equipment, Subscriber Organization shall be assessed a trip charge applicable to non-gratuitous labor service at the applicable currently effective rate set forth in Company's electric tariff. If the telecommunication service is inactive or non-operational for three consecutive Months, then, in addition to the applicable trip charges, all energy produced and delivered from the Project shall be treated and priced as Unsubscribed Energy hereunder effective as of the first calendar day of such third Month and continuing until the subsequent Month during which the telecommunication service is made operational and active. Subscriber Organization's payment of trip charges hereunder shall be due within thirty (30) days from the date a bill is presented to Subscriber Organization by Company. If Subscriber Organization does not make payment in full within that time, without limiting any other right or remedy available to Company, the unpaid balance shall bear interest at the rate of one-and-one half percent (1.5%) per month to be invoiced monthly.

## ARTICLE 4

### Conditions Precedent

4.1 Conditions Precedent. The obligations of the Parties under this Agreement are subject to satisfaction of the following conditions precedent:

(A) Receipt of all necessary Governmental Approvals, including but not limited to Subscriber Organization being authorized to operate by the NMPRC and holding a valid registration from the NMPRC to operate as a subscriber organization under the Community Solar Act (except for such Governmental Approvals as may be received any time prior to Commercial Operation); and

(B) Full compliance by the Subscriber Organization and the Project Owner (if applicable) as of the Execution Date with all requirements of the Community Solar Act and the Program

Materials (except for such requirements to be complied with during construction or after Commercial Operation).

## ARTICLE 5

### Acquisition of Solar Energy Output

5.1 Acquisition of Solar Energy Output. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Subscriber Organization shall deliver to Company, and Company shall acquire and receive from Subscriber Organization, all right, title and interest in and to the Solar Energy Output made available by Subscriber Organization at the Point of Delivery; *provided, however*, that, Company shall not be required to receive and acquire Solar Energy Output when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a T&D Curtailment is continuing, (c) a Subscriber Organization Forced Outage is continuing to the extent Solar Energy Output is not delivered to Company, or (d) a Scheduled Maintenance Outage is continuing to the extent Solar Energy Output is not delivered to Company. Furthermore, Company shall not be required to receive or acquire Solar Energy Output that corresponds to instantaneous generation that exceeds the Solar Capacity identified in Section 2.2 as adjusted for losses to the Point of Delivery.

5.2 Title and Risk of Loss. As between Subscriber Organization and Company, Subscriber Organization shall be deemed to be in control of the Solar Energy Output from the Project up to delivery and receipt at the Point of Delivery and Company shall be deemed to be in control of such Solar Energy Output from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Solar Energy Output shall transfer from Subscriber Organization to Company at the Point of Delivery. Company shall have the unconditional right to use and control the Solar Energy Output after it takes title and risk of loss.

5.3 Future Environmental Attributes and Changes in Law. The Parties acknowledge and agree that (a) additional Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this Agreement all right and title to such additional Environmental Attributes is included as Solar Energy Output and Subscriber Organization is fully compensated therefor by the Solar Energy Output Payment; and (c) such additional Environmental Attributes shall pass to Company in accordance with Section 5.2 of this Agreement.

5.4 Market Event. To the extent applicable, if at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Point of Delivery or Company no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the interconnection and delivery requirements in this Agreement, the Parties shall cooperate in good faith to facilitate the delivery of Solar Energy Output from the Point of Delivery to Company, at the least possible cost to the Parties, consistent with this Agreement to the extent possible. The foregoing shall not apply if, in connection with the Market Event, the Project is no longer in Company's service territory or otherwise fails to meet any of the requirements of the Community Solar Act.

5.5 Forced Outages. Company and Subscriber Organization shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Subscriber Organization Excused Hours or a Subscriber Organization Forced Outage. Company or Subscriber Organization (as appropriate) shall at the earliest practicable date provide the other Party written notice ("**Outage Notice**") of the declaration of the existence of Subscriber Organization Excused Hours or a Subscriber Organization Forced Outage. Subscriber Organization shall provide such notice to the system control center or as otherwise directed by Company. Company or Subscriber Organization (as appropriate) shall keep the other Party informed of the expected end date of such event as well as any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event.

## ARTICLE 6

### Billing and Payment Procedures; Subscription Limitations

6.1 Bill Credits for Subscribed Energy and Payments for Unsubscribed Energy. Subject to the terms of this Agreement, for Subscribed Energy that is delivered to Company, Company will make the Solar Energy Output Payment for such Subscribed Energy by issuing community solar bill credits on a monthly basis to Subscribers in accordance with the Community Solar Act, the Billing Data received from the Subscriber Organization, and the Program Materials, based on the Subscriber's Allocation as calculated in accordance with the Program Materials and applicable Company tariffs. If the community solar bill credit issued to the Subscriber exceeds the amount owed by a Subscriber in any billing period, the excess portion of the community solar bill credit in the billing period shall be carried forward and credited against future charges, unless and until the Subscriber cancels service with Company. The community solar bill credit may be changed annually or otherwise as provided by order of the Commission. Unsubscribed Energy may be rolled forward on the Subscriber Organization's account for up to one year from its month of generation and allocated by the Subscriber Organization to its Subscribers at any time during that period. At the end of the 12-month period, any unallocated Unsubscribed Energy shall be removed from the Subscriber Organization's account with Company and the Unsubscribed Energy shall be purchased by Company at Company's avoided cost rate (as found in Company's Rate No. 16.), as that rate may be amended from time to time. Any Unsubscribed Energy allocated to Subscribers by the Community Solar Facility must be allocated on a first-in-first-out basis and such allocations shall be submitted by the Subscriber Organization to Company in accordance with the Program Materials.

6.2 Billing Data. Subscriber Organization shall submit to Company in accordance with the Program Materials and as reasonably requested by Company from time to time the names of each Subscriber holding a Subscription to the Project and all other Billing Data. Subscriber Organization is responsible for timely providing, reporting and updating Billing Data in accordance with the Program Materials, including timely providing information on the transfer of any Subscription by a Subscriber as permitted by the Community Solar Act or removing any Subscriber from the Billing Data that no longer is a Qualifying Subscriber under the Community Solar Act or whose Subscription does not meet the requirements of the Community Solar Act, individually or together with other Subscriptions. If Subscriber Organization does not provide complete, timely and accurate Billing Data to Company and Company cannot apply the community solar bill credit, any amount unallocated to Subscribers shall be deemed Unsubscribed Electricity.

6.3 Data Errors. Company shall be entitled to rely exclusively on the Billing Data as provided to Company in accordance with the Program Materials and shall have no liability for relying on such Billing Data; *provided*, that such reliance shall not be deemed to constitute any acceptance or confirmation of the information contained therein, or any waiver of claims or disputes with respect thereto. Subscriber Organization shall be solely responsible for untimely and inaccurate Billing Data and shall indemnify and hold Company harmless for any untimely and inaccurate Billing Data. If a Subscriber has been receiving a community solar bill credit and the Subscriber is not a Qualifying Subscriber for all or any portion of such community solar bill credit, Subscriber Organization shall reimburse Company for all community solar bill credits issued to such non-qualifying Subscriber beginning from the time the Subscriber Organization knew or reasonably should have known that the Subscriber is no longer a Qualifying Subscriber or is otherwise not entitled to some or all of the community solar bill credit. Moreover, the Subscriber Organization shall pay to Company the reasonable costs incurred, if any, by Company for making corrections to the community solar bill credits resulting from untimely or inaccurate Billing Data and the Company shall provide the Subscriber Organization an itemized list of all such costs. The correction of any allocation of previously-applied community solar bill credits among Subscribers or payments to Subscriber Organization for Unsubscribed Energy, pertaining to a particular Month due to any inaccuracy reflected in such Billing Data shall be the full responsibility of Subscriber Organization, unless such inaccuracies are caused solely by Company.

6.4 Subscription Limitations. Following the Date of Commercial Operation, the Project will have at least ten Subscribers (or such different number as required by the Community Solar Act or Applicable Law from time to time). Except for a Native Community Solar Project, no Subscriber will, at any time following the Date of Commercial Operation, be allocated more than forty percent of the generating capacity of the

Project (or such different percentage as required by the Community Solar Act or Applicable Law from time to time). Subscriber Organization shall ensure that each Subscription is sized to supply no more than 100 percent of the Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed. Subscriber Organization shall ensure at least thirty percent (or such different percentage as required by Applicable Law from time to time) of the electricity produced from the Project is reserved for low-income customers or low-income service organizations, as defined by the Community Solar Act. Subscriber Organization shall ensure that premises to which a Subscription is attributed by a Subscriber will be a premise served by Company's retail electric service. If any Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Company, then, effective upon the date such premises is no longer served by Company, Subscriber Organization shall remove such Subscription from the Billing Data and, if Subscriber Organization fails to do so, Company shall have the right to remove such Subscription on the Subscriber Organization's behalf. Company reserves the right to refuse to accept any additions, deletions or changes to the Billing Data to the extent such addition, deletion or change results in non-compliance with any of the preceding requirements in this Agreement or in the Community Solar Act or Commission rules. If a Subscriber or Subscription no longer complies with this Agreement or any requirements in the Community Solar Act or Commission rules, then Company may treat any impacted Allocations as Unsubscribed Energy unless and until such all such requirements have been met with respect to such Subscriber or Subscription. Subscriber Organization shall verify that the Subscriber Organization and the Project meet the requirements for low-income customers and low-income service organizations consistent with the Community Solar Act. Subscriber Organization is solely responsible for determining if the Subscriber qualifies as a low-income customer, unless NMPRC provides another process for determining low-income customer eligibility. Subscriber Organization shall issue Subscriptions in the Project only to Qualifying Subscribers. Subscriber Organization is responsible for and represents and warrants that each Subscriber is a Qualifying Subscriber.

6.5 Taxes. Company makes no warranty or representation concerning the tax, financial or legal consequences, if any, to Subscriber Organization or to any Subscriber with respect to the installation of the Project or the production and sale of Solar Energy Output. Company makes no warranty or representation concerning the taxable consequences, if any, to Subscriber Organization or its Subscribers with respect to community solar bill credits issued to Subscribers. Additionally, the Company makes no warranty or representation concerning the implication of any federal or state securities laws on how Subscriptions are handled.

## ARTICLE 7

### Operations and Maintenance

7.1 RESERVED

7.2 RESERVED

7.3 Access to and Inspection of the Project. After reasonable prior notice provided by Company, Subscriber Organization will allow Company to inspect the Project as necessary to connect to Company's system and address any interconnection issues. Subscriber Organization shall provide Company and its authorized agents, employees and inspectors reasonable access to the Project, including the control room (if any) and Subscriber Organization's Interconnection Facilities, if the configuration of those facilities does not permit disconnection or needed testing from Company's side of the interconnection. The foregoing does not provide Company with the right to direct or modify the operation of the Project in any way. If Company enters the Subscriber Organization's property, Company will remain responsible for its personnel.

7.4 Operating Parameters.

(A) Subscriber Organization is solely responsible for ensuring that the equipment installed at the Project meets all applicable codes, standards, and regulatory requirements at the time of installation and at all times throughout its operation. The Project will have a capacity nameplate rating of five megawatts

(5 MW AC) or less at the point of delivery/interconnection. The Project must at all times be physically located entirely within Company's service territory and shall not be relocated at any time during the course of this Agreement.

(B) Subscriber Organization shall maintain the Project and the individual components of the Project in good working order at all times during the Term of the Agreement. If, during the Term of the Agreement, the Project or any of the individual components of the Project should be damaged or destroyed such that the Project is not delivering Solar Energy Output to Company, Subscriber Organization shall provide Company written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at Subscriber Organization's sole expense. If, during the Term of the Agreement, any Company-owned and operated components interconnected with the Project should be damaged or destroyed such that the Project is not delivering Solar Energy Output to Company, Company shall provide Subscriber Organization written notice and promptly repair or replace the component to its original specifications, tilt and orientation at Company's sole expense.

(C) Subscriber Organization shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the T&D System, except for normal testing and repair. Subscriber Organization shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and Prudent Utility Practices.

7.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date, if requested by Company, Subscriber Organization shall coordinate with Company regarding operating procedures for the Project. Company and Subscriber Organization shall review and mutually agree on any appropriate updates to the operating procedures for the Project. Subscriber Organization must coordinate staffing to operate, maintain and control the Project and all Project equipment at all times consistent with the operating procedures then in effect.

7.6 Sales to Third Persons. Subscriber Organization shall not sell or divert Solar Energy Output to a third Person or for use by Subscriber Organization.

7.7 Company-Requested Performance Tests. If requested by Company, in the event of a material adverse change in expected Solar Energy Output or significant discrepancy with the annual generation forecast, Subscriber Organization shall perform such performance tests as requested by Company to validate the Solar Capacity.

7.8 System Emergencies. Company may stop providing electricity to Project during a system emergency. Company will not discriminate against the Project when it stops providing electricity or when it resumes providing electricity. In the event of an emergency requiring disconnection of the Project from Company's system, Company shall follow the process, and provide notice to the Subscriber Organization, consistent with the provisions of the Interconnection Agreement between the Parties.

## ARTICLE 8

### RECs and Environmental Attributes

#### 8.1 Sale of RECs and Environmental Attributes.

(A) All RECs and Environmental Attributes associated with the generation of Photovoltaic Energy from the Project shall be owned by, and shall be transferred by the Subscriber Organization, to Company, free and clear of all claims, liens, security interests, and encumbrances of any kind, nature and description. The RECs and Environmental Attributes transferred under this Agreement shall be bundled with the associated Photovoltaic Energy. By entering into this Agreement, Subscriber Organization waives any claim to any right or ownership interest in the RECs associated with generation

by Project, and transfers to Company any and all rights and interest Subscriber Organization may have in such RECs. No Subscriber shall receive any RECs associated with the generation by the Project.

(B) If allowed by WREGIS, the Company or its representative shall register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(C) Company will not have any liability to Subscriber Organization for any act, omission, misrepresentation, or breach (other than an act or omission due to the failure to pay fees, charges or expenses), by an entity that certifies the characteristics or delivery of a REC, or the qualification of the Project as a renewable energy facility, under Applicable Law. The certifying entity may include a Governmental Authority, WREGIS or other generation information system, an independent auditor or other third party.

8.2 Native Community Solar Project. The provisions of Section 8.1 shall not apply to any native community solar project and, in accordance with the Community Solar Act, all Environmental Attributes associated with a native community solar project shall be owned by the owner of the native community solar project.

## ARTICLE 9

### Default and Remedies

#### 9.1 Events of Default of Subscriber Organization.

(A) Any of the following events shall constitute an Event of Default of Subscriber Organization upon its occurrence and no cure period shall be applicable other than as set forth below:

(1) Subscriber Organization's dissolution or liquidation;

(2) Subscriber Organization's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Subscriber Organization voluntarily taking advantage of any such law by answer or otherwise, including any assignment for the benefit of creditors;

(3) or the Interconnection Agreement is terminated.

(B) Any of the following events shall constitute an Event of Default of Subscriber Organization upon the failure of Subscriber Organization to cure within thirty (30) Days after the date of written notice from Company to Subscriber Organization, or such longer period as may be necessary to effectuate a cure provided that Subscriber Organization has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) A breach by the Subscriber Organization of, or failure to comply with, its covenants or obligations set forth in this Agreement (including a failure of the Project Owner, if applicable, to comply with its obligations hereunder and under Applicable Law), which would materially affect either Party's performance under this Agreement or implementation of the Community Solar Program;

(2) Any representation or warranty made by Subscriber Organization being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement;

(3) Revocation of any Governmental Approval that materially impacts

the Subscriber Organization's operation of Community Solar Facilities or that otherwise affects the implementation of the Community Solar Program;

(4) Any actual or purported sale, assignment or Change of Control not in compliance with Article 15;

(5) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Subscriber Organization as debtor or its parent or any Affiliate; *provided, however*, that Subscriber Organization does not obtain a stay or dismissal of the filing within the cure period; or

(6) Except to the extent arising from the acts or omissions of the Company, Subscriber Organization is not able to deliver Photovoltaic Energy to the Point of Delivery as a result of the Project not maintaining its interconnection with the T&D Interconnection Facilities or otherwise fails to maintain in effect, or is in default under, any agreements required to deliver Photovoltaic Energy to the Point of Delivery (including the Interconnection Agreement), *provided* that, without limiting any other rights of Company hereunder, Company reserves the right to immediately suspend its performance under this Agreement until such Event of Default is cured.

## 9.2 Events of Default of Company.

(A) Any of the following shall constitute an Event of Default of Company upon the failure of Company to cure within thirty (30) Days after the date of written notice from Subscriber Organization to Company or such longer period as may be necessary to effectuate a cure provided that Company has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) A breach by the Company of, or failure to comply with, its covenants or obligations set forth in this Agreement, which would result in a material adverse impact on Subscriber Organization;

(2) Any representation or warranty made by Company under this Agreement being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement; or

(3) Any actual or purported sale, assignment or Change of Control not in compliance with Article 15.

9.3 Damages Prior to Termination. Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 9.8, the duty to mitigate damages set forth in Section 9.9, and any Dispute Resolution in which parties may be engaged pursuant to Sections 9.6 and 19.10, the Non-Defaulting Party shall have the right to (i) collect (or set-off) damages accruing prior to the Early Termination Date of this Agreement from the Defaulting Party, (ii) exercise its rights pursuant to Section 9.5, (iii) suspend performance (including receipt of energy and payment), and (iv) exercise its rights to terminate this Agreement pursuant to Section 9.4.

9.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date upon which this Agreement shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this Agreement, including in the case of Company, terminating payment of the Solar Energy Output Payment and issuance of community solar bill credits.

9.5 Specific Performance. In addition to the other remedies specified in this Article 9, each Party shall be entitled to specific performance or other injunctive relief, without the necessity of filing any bond, with

respect to any actual or threatened breach of the other Party under this Agreement.

9.6 No Default Prior to Dispute Resolution. If the Parties are engaged in a dispute as to whether an Event of Default has occurred or whether a Party has a right to terminate this Agreement, and the Parties are handling the dispute through the procedures established in Section 19.10 the Party claiming the Event of Default or the right to terminate shall not be entitled the right to terminate this Agreement or to relief provided under Sections 9.3 and 9.5 until the Parties have completed their good faith negotiations to resolve the dispute pursuant to Section 19.10.

9.7 Remedies for Default by Subscriber Organization. In the event of an Event of Default by the Subscriber Organization, Company shall have available to it any remedy provided for in this Agreement, or any remedy otherwise provided at law or equity, and any or all of the remedies set forth in this Agreement can be exercised by Company either singularly or cumulatively.

A. In the event of Default by a Subscriber Organization, Company shall have the right to disconnect the Project from Company's electric network. Company shall send copies of the Notice of Disconnection to Subscriber Organization, all Subscribers of the Subscriber Organization, and the NMPRC. No community solar bill credits will be applied for any Photovoltaic Energy production occurring during or after the physical disconnection.

B. Upon Default by a Subscriber Organization, Company may petition the NMPRC for any other appropriate relief, including but not limited to requesting Subscriber Organization be disqualified from serving in the future as a Subscriber Organization under the Community Solar Act.

9.8 Limitation of Liability. NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY THE OTHER PARTY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS AND LOSS OF USE, WHETHER BASED IN CONTRACT, TORT, UPON ANY THEORY OF INDEMNITY, OR OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISION, WITH RESPECT TO COMPANY'S DUTIES OR PERFORMANCE OR LACK OF PERFORMANCE UNDER THIS AGREEMENT, COMPANY'S LIABILITY TO SUBSCRIBER ORGANIZATION SHALL BE LIMITED AS SET FORTH IN COMPANY'S TARIFFS FILED WITH THE NMPRC AND TERMS AND CONDITIONS FOR ELECTRIC SERVICE AND SHALL NOT BE AFFECTED BY THE TERMS OF THIS AGREEMENT. THERE ARE NO THIRD-PARTY BENEFICIARIES OF ANY COMPANY DUTY UNDER THIS AGREEMENT OTHER THAN COMPANY'S DUTY TO SUBSCRIBERS TO ISSUE COMMUNITY SOLAR BILL CREDITS AS SET FORTH IN THIS AGREEMENT.

9.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

## ARTICLE 10

### Contract Administration and Notices

10.1 Notices in Writing. Notices required by this Agreement shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party. If delivered, the notice, request, consent or other communication shall be simultaneously sent by confirmed electronic mail or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day).

10.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this Agreement. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

10.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this Agreement.

10.4 Records. Each Party shall keep and maintain complete and accurate records and all other data required for the purposes of proper administration of this Agreement and shall provide such information to the other Party upon reasonable request.

10.5 Provision of Real-Time Data. Upon request by Company, Subscriber Organization shall provide read-only and downloadable electronic access to data collected at the Project and corresponding unit availability data, including real time data to the extent available.

10.6 Provision of Metrological Data. For projects greater than three megawatts (AC), the Subscriber Organization shall provide read-only and downloadable electronic access to all metrological data.

## ARTICLE 11

### Force Majeure

#### 11.1 Definition.

(A) Neither Party will be considered to be in default in respect of any obligation hereunder to the extent and only for so long that delays in or failure of performance is due to a Force Majeure Event and the affected Party timely notifies the other Party of such Force Majeure Event in accordance with Section 11.2, except for the obligation to pay monies due. A **"Force Majeure Event"** means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming the Force Majeure Event, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a facility or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the facility caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of Subscriber Organization to secure and protect the facility, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(B) The term Force Majeure Event does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Subscriber Organization, unless such acts or omissions are themselves excused by reason of Force Majeure Event; (ii) any full or partial curtailment in the electric output of the facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of a Party's supplies, or that affect demand or price for any of a Party's products.

(C) In no event will any delay or failure of performance caused by a Force Majeure

Event extend this Agreement beyond its stated Term. Notwithstanding any other provision in this Agreement to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Subscriber Organization continues for an uninterrupted period of one hundred eighty (180) Days from its inception, either Party may, at any time following the end of such period, terminate this Agreement upon written notice to the other Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

11.2 Notification Obligations; Mitigation. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable. The suspension of performance shall be of no greater scope and of no greater duration than is necessary and the Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this Agreement. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section 11.2. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

## ARTICLE 12

### Representations, Warranties and Covenants

12.1 Subscriber Organization's Representations, Warranties and Covenants. In addition to all other representations, warranties and covenants herein, Subscriber Organization hereby represents as of the Execution Date, and warrants and covenants throughout the Term, as follows:

(A) Subscriber Organization is a \_\_\_\_\_, duly organized, validly existing and in good standing under the laws of the state of \_\_\_\_\_. Subscriber Organization is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Subscriber Organization; and Subscriber Organization has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Subscriber Organization have been and will continue to be throughout the Term duly authorized by all necessary company action and applicable consent or authorization of the Project Owner, and do not and will not: (1) require any further consent or approval by any governing body of Subscriber Organization, other than that which has been obtained and is in full force and effect; (2) violate or breach any provision of the governing documents of the Subscriber Organization; or (3) conflict with or constitute a breach or default under any agreement to which Subscriber Organization is a party or any judgment, order, statute, or regulation that is applicable to Subscriber Organization or the Project; the violation of which could have a material adverse effect on the ability of Subscriber Organization to perform its obligations under this Agreement.

(C) The obligations of Subscriber Organization under this Agreement are valid and binding obligations of Subscriber Organization.

(D) All Governmental Approvals necessary for Subscriber Organization's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect or will be obtained and in effect at the Commercial Operation Date.

(E) Subscriber Organization shall at all times during the Term of this Agreement comply, and shall cause the Project Owner to comply, with the Program Materials, the Community Solar Act and all Applicable Laws (including any and all consumer protection rules established by the NMPRC) in effect or that may be enacted during the Term.

(F) Subscriber Organization shall disclose to Company the extent of, and as soon as reasonably practicable, but not later than three business days, after it becomes known to Subscriber Organization, any material violation of any Applicable Laws arising out of the Project that would impact the Solar Energy Output or Solar Energy Output Payment.

(G) Subscriber Organization has not transferred the RECs or Environmental Attributes to any other Person, in whole or in part and all right, title and interest in and to the RECs and Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Company.

(H) Subscriber Organization is not in default and will not breach the Interconnection Agreement (including by performance or non-performance of any obligation that must be performed by the Project Owner, or any revocation or failure of authorization from the Project Owner), which has been duly authorized and executed by Subscriber Organization prior to or at the Effective Date of this Agreement.

(I) Subscriber Organization qualifies, and will qualify at all times during the Term, as a "subscriber organization" under the Community Solar Act and holds, and will hold at all times during the Term, a valid authorization or registration to operate as a subscriber organization from the NMPRC (to the extent required) and such authority to operate has not been suspended or revoked by the NMPRC.

(J) Subscriber Organization's bid for the Project, as accepted by the Administrator, was true, correct and complete in all material respects, did not make any untrue statement of material fact and did not omit any facts or information that would make the bid misleading in light of all the circumstances; and Subscriber Organization and the Project will fully comply with all commitments and requirements set forth in Subscriber Organization's bid accepted by the Administrator.

**12.2 Company's Representations, Warranties and Covenants.** Company hereby represents and warrants as follows:

(A) Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Company. Company has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Company have been duly authorized by all necessary company action, and do not and will not: (1) require any further consent or approval by any governing body of Company, other than that which has been obtained and is in full force and effect; (2) violate or breach any provision of the governing documents of the Company; or (3) conflict with or constitute a breach or default under any agreement to which Company is a party or any judgment, order, statute, or regulation that is applicable to Company; the violation of which could have a material adverse effect on the ability of Company to perform its obligations under this Agreement.

(C) This Agreement is a valid and binding obligation of Company, subject to the contingencies identified in Article 4.

## **ARTICLE 13**

### **Insurance**

**13.1 Evidence of Insurance.** Subscriber Organization shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Company with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Subscriber Organization in accordance with Commission rules and this Article 13 along with endorsements required below in Section 13.2, and a list of any other endorsements

to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A-VII by A.M. Best or that Company, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Company). Subscriber Organization's liability under this Agreement shall not be limited to the amount of insurance coverage required herein.

### 13.2 Endorsements and Other Requirements.

(A) Subscriber Organization shall provide endorsements evidencing that the insurers shall provide Company thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Company and its Affiliates, officers, directors, agents, subcontractors and employees.

(B) Subscriber Organization shall provide endorsements providing that the insurance required under this Agreement is primary and non-contributory with respect to other insurance carried by Company.

(C) Subscriber Organization shall provide endorsements providing that the general liability insurance and any automobile or umbrella insurance names Company and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Company (or other additional insured) is vicariously liable for the negligence, acts or omissions of Subscriber Organization. The general liability insurance and any umbrella insurance shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

(D) All liability insurance required under this Agreement shall cover occurrences during the Term of this Agreement on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Subscriber Organization, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

## ARTICLE 14

### Legal and Regulatory Compliance and Governmental Approval

14.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws.

14.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and any other approvals, consents, authorizations or other requirements that are required from any Governmental Authority with respect to the Project and shall timely and properly pay its respective charges and fees in connection therewith. The obligations of the Parties hereunder, including Company's obligation to acquire Solar Energy Output at the rates specified in Article 6, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law.

14.3 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Subscriber Organization. To the extent that Subscriber Organization contributes in whole or in part to actions that result in monetary penalties being assessed to Company by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Subscriber Organization shall reimburse Company for its share of monetary penalties.

## ARTICLE 15

### Assignment and Other Transfer Restrictions

15.1 No Assignment Without Consent. Except as permitted by the NMPRC or under the Program Materials, Subscriber Organization shall not sell, transfer, or assign this Agreement, in whole or in part, and Subscriber Organization shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto. Company may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the Project. In no event shall any approved assignment by Subscriber Organization become effective before a new Subscription has been entered into between Subscriber Organization's assignee and each and every Subscriber.

15.2 Conditions on Transfers. As a condition to effectiveness of any transfer or assignment of the Agreement by Subscriber Organization, sale or transfer of the Project or Change of Control, (A) no Event of Default or other breach or default hereunder of the transferor, assignor or (in the case of a Change of Control) Subscriber Organization shall then be continuing, (B) the transferee, assignee or (in the case of a Change of Control) Subscriber Organization shall execute and deliver such documents and agreements as may be reasonably requested by Company, including an agreement in writing to be bound by and to assume (or in the case of a Change of Control, to reaffirm) the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, transfer or Change of Control, and (C) to the extent required or applicable, consent to such transfer, assignment, sale or Change of Control, and all required authorization of the transferee, assignee or Subscriber Organization (after a Change of Control) has been obtained from the Project Owner and remains in full force and effect. Provided that the conditions and requirements of this Article 15 are satisfied, then the assigning or transferring Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this Agreement with the Affiliate as if such Person had been named under this Agreement; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

15.3 Change of Control. Except for a Subscriber Organization Permitted Transfer, any Change of Control of Subscriber Organization, whether voluntary or by operation of law, shall require the prior written consent of Company, which shall not be unreasonably withheld, conditioned or delayed. Subscriber Organization shall give Company notice of a Subscriber Organization Permitted Transfer no later than ten (10) Business Days after the consummation thereof.

15.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this Agreement made without fulfilling the requirements of this Agreement shall be null and void and shall constitute an Event of Default pursuant to Article 9.

15.5 Subcontracting. Subscriber Organization may subcontract its duties or obligations under this Agreement without the prior written consent of Company; *provided*, that no such subcontract shall relieve Subscriber Organization of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Subscriber Organization shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

15.6 Lender Agreements. In connection with any assignment of this Agreement by Subscriber Organization to its lenders, as soon as reasonably practicable after reasonable request from Subscriber Organization or any lender, Company will cooperate reasonably with Subscriber Organization and lender to agree upon and enter into a written consent, in form and substance acceptable to Company, to any of Subscriber Organization's lenders reasonably requesting such consent; *provided*, that Company shall have no obligation to modify any terms of this Agreement, provide any consent that would have a material adverse effect on Company's rights or obligations under this Agreement, release or waive any rights or

remedies under this Agreement or agree to any lien on any property of Company. Subscriber Organization shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the reasonable fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by Subscriber Organization or the lender, and provided by Company, pursuant to this Article 15.

## ARTICLE 16

### Indemnity; Insurance Proceeds

16.1 Indemnification. Company and Subscriber Organization agree to defend, indemnify and hold each other, and their respective officers, directors, employees and agents, harmless from and against all claims, demands, losses, liabilities and expenses (including reasonable attorneys' fees) (collectively "Losses") for personal injury or death to Persons and damage to each other's physical property or facilities or the property of any other Person to the extent arising out of, resulting from or caused by the negligent or intentional acts, errors, omissions or fraud of the indemnifying Party. Furthermore, each Party shall defend, indemnify and hold the other harmless from and against all damages that are or were incurred or suffered by the indemnified Party and that relate to the indemnifying Party's breach or failure to perform any of the covenants, agreements, obligations, representations or warranties contained in this Agreement. Nothing in this Section 16.1 shall relieve Subscriber Organization or Company of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the indemnitees but the indemnifying Party's liability to pay Losses to the indemnified Party shall be reduced in proportion to the percentage by which the indemnitees' negligent or intentional acts, errors or omissions caused the Losses. Neither Party shall be indemnified for its Losses resulting from its sole negligence or intentional misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the Losses that may be subject to indemnification. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 16 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided that*, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 16.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 16.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided that*, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 13, as applicable, as to which it has assumed the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or

proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

16.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 16, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party. X

## ARTICLE 17

### Governmental Charges

17.1 Allocation of Governmental Charges. Subscriber Organization shall pay all Governmental Charges on or with respect to the Project or on the sale or delivery of Solar Energy Output arising prior to the Point of Delivery. Company shall pay all Governmental Charges (other than any Governmental Charges for which Subscriber Organization is liable under this Section 17.1 or under Section 6.5) on or with respect to the taking and purchase by Company of Solar Energy Output that are imposed from and after the Point of Delivery. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Company shall provide Subscriber Organization with all reasonably requested documentation within thirty (30) Days after requested by Subscriber Organization to evidence such exemption or exclusion.

## ARTICLE 18

### Confidentiality and Data Sharing

#### 18.1 Confidentiality.

(A) For purposes of this Section 18.1, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party. This Section 18.1 is subject in all respects to the Company's applicable community solar tariffs, any rules or regulations of the NMPRC with respect to customer information or energy usage information, and the Community Solar Act, which collectively will control in case of any conflict or inconsistency with this Section 18.1.

(B) Other than in connection with this Agreement (including Section 18.2) and the Program Materials, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, consultants, financial advisers, lenders, potential lenders, legal counsel and accountants, and (in the case of Subscriber Organization) the Project Owner (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives are under at least as restrictive confidentiality obligations and have a need to know the Confidential Information in connection with this Agreement. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care).

(C) As used in this Section 18.1, "**Confidential Information**" means all information that is furnished in connection with this Agreement to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party which is reasonably understood to be confidential (whether such information is furnished or made accessible in writing, electronically, orally, visually or by any other means). Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Receiving Party's Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party;

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party;

(4) information related to Subscribers and Subscriptions, *provided*, that confidentiality of a Subscriber's information shall be subject to all applicable rules and regulations of the NMPRC with respect to customer or energy usage information and shall be disclosed only in accordance with the Program Materials and an executed Subscriber consent; and

(5) any other information that may or must be reported, filed or disclosed in accordance with the Community Solar Act.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this Agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this Agreement, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information, subject to reasonable advance notice to the non-disclosing Party. In such event, the Party making the disclosure shall inform the other Party of the disclosure within a sufficient amount of time to allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

18.2 Sharing of Information. Subscriber Organization acknowledges and agrees that, in order for Company to carry out its responsibilities under the Agreement and the Community Solar Program, Company may be required and shall be permitted to provide access or otherwise disclose and release to any Subscriber, the Administrator, or the NMPRC, or intervenor in any proceeding before the NMPRC upon discovery request, any and all data that is non-confidential, related to the Project in its possession, including information regarding the total bill credits applied by Company with respect to the Project and the amounts paid to Subscriber Organization for Unsubscribed Energy and Environmental Attributes generated by the Project. Subscriber Organization acknowledges and agrees that, in order for Company to carry out its responsibilities in applying a bill credit, Company can provide access or otherwise disclose to any Subscriber: (1) any and all production meter data related to the Project, and (2) any information regarding the determination of the bill credit applied by Company. Additionally, Company may periodically provide a bill message to Subscribers clarifying that questions or concerns related to their Subscription should be

directed to the Subscriber Organization, including a statement that the Subscriber Organization is solely responsible for resolving any disputes with Company or the Subscriber about the accuracy of the Project production and that Company is solely responsible for resolving any disputes with the Subscriber about the applicable rate used to determine the amount of the community solar bill credit. Any additional detailed information requested by a Subscriber shall be provided only upon Subscriber Organization's consent in writing or email to Company, or unless the NMPRC or New Mexico Attorney General's Office requests that Company provide such information to the Subscriber. In addition, by executing this Agreement, Subscriber Organization grants to Company permission to share information concerning the location of the generation of the RECs by the Project with other New Mexico public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the Project have not been transferred to another entity and for any other legitimate business purpose, in Company's sole discretion.

18.3 Subscriber Written Consent Required. Subscriber Organization shall obtain and maintain from each Subscriber an executed data consent form, in such form as required by Company, allowing Company to share information regarding the Subscriber with Subscriber Organization in order, among other things, for Subscriber Organization to verify Subscriber's eligibility to hold a Subscription and the size and amount of such Subscription are consistent with the Community Solar Act. A copy of the form shall be delivered to Company prior to Subscriber Organization's inclusion of the Subscriber in any Billing Data. If a Subscriber has failed to sign a data consent form, or a signed form has not been provided to Company, Company will have no obligation to issue a bill credit to the Subscriber. Company shall not be liable for any delay or error in the issuance of a bill credit if the Subscriber has not signed the data consent form or the form has not been provided to Company. The Subscriber Organization shall preserve the privacy expectations of the Subscribers under Applicable Law, such as not publicly providing a Subscriber's account information, usage information or the amount of the bill credit. Subscriber Organization will not disclose such information to third parties, other than to the NMPRC, the New Mexico Office of Attorney General, or to its Receiving Party's Representatives pursuant to Section 18.1, unless the Subscriber has provided written consent, or such disclosure is compelled by law or regulation.

## ARTICLE 19

### Miscellaneous

19.1 Waiver. Subject to Section 19.10, the failure or delay of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

19.2 Disclaimer of Certain Third-Party Beneficiary Rights. In executing this Agreement, Company does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Subscriber Organization, including any Subscriber, or to the Project Owner. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this Agreement, other than Company's duty to issue community solar bill credits to Subscribers as provided for in this Agreement.

19.3 Relationship of the Parties.

(A) This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Subscriber Organization shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Subscriber Organization shall be considered

employees of Company for any purpose; nor shall Subscriber Organization represent to any Person that he or she is or shall become a Company employee.

19.4 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

19.5 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits or Schedules is held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the Agreement shall remain in force and effect. Company and Subscriber Organization shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

19.6 Complete Agreement; Amendments. The terms and provisions contained in this Agreement, including the Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this Agreement and together with any agreements or documents (including the Program Materials) incorporated or referenced herein, constitute the entire agreement between Company and Subscriber Organization with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Company and Subscriber Organization with respect to the sale of Solar Energy Output from the Project. In the event of a conflict between the terms of any Exhibit or Schedule and the terms of this Agreement, the terms of this Agreement shall take precedence. Subject to any necessary approval by any Governmental Authority with jurisdiction over this Agreement, this Agreement may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that either Party may update their address and the Project Owner's address on Exhibit D without the consent of the other Party in accordance with this Agreement. Notwithstanding the foregoing, in the event the NMPRC approves (or is deemed to approve) any amendments, modifications, changes or updates to the approved form of Community Solar Subscriber Organization Agreement, this Agreement shall be deemed automatically amended effective as of the date of such NMPRC approval. In the event the Company files an amended, modified, changed or updated form of Community Solar Subscriber Organization Agreement and such amended, modified, changed or updated form of Community Solar Subscriber Organization Agreement is not denied by the NMPRC, suspended, protested, or set for a hearing by the NMPRC, such amended, modified, changed or updated form of Community Solar Subscriber Organization Agreement will be deemed agreed to by the Parties and shall automatically amend this Agreement with no further action of either Party, provided, however, that the Company shall notify all impacted Subscriber Organizations of the intent to file for Commission approval such an amended, modified, changed or updated form of Community Solar Subscriber Organization Agreement at least thirty (30) days prior to such filing.

19.7 Binding Effect. This Agreement, as it may be amended from time to time pursuant to this Article 19, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

19.8 Headings; Interpretation. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. Use of the words "include" or "including," or similar words shall be interpreted as "including but not limited to" or "including, without limitation." Use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

19.9 Counterparts. This Agreement or any supplement, modification, amendment or restatement hereof may be executed in two or more counterparts (including electronic signature), and delivered by mail, courier or electronic means, all of which taken together shall constitute a single agreement, and each executed

counterpart shall have the same force and effect as an original instrument.

19.10 Governing Law; Resolution of Disputes. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this Agreement in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this Agreement, the Parties, through their designated representatives, shall promptly negotiate with one another in good faith in order to reach resolution of the dispute. In the event a dispute cannot be resolved by the Parties within thirty (30) days after written notice of the dispute to the other Party, then the Parties shall first petition for resolution of the dispute to the NMPRC, who maintains continuing jurisdiction over this Agreement. Nothing in the foregoing shall prevent or delay either Party from pursuing any right or remedy available to it under this Agreement or at law or in equity; provided such Party first submits the dispute for resolution to the NMPRC.

19.11 Right to Mortgage. Company shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this Agreement, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Subscriber Organization; *provided*, that Company shall not be relieved of any of its obligations or liability under this Agreement. Subscriber Organization shall cooperate reasonably with Company to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Subscriber Organization, as may be necessary to assist Company in consummating such transactions.

19.12 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this Agreement, the Parties acknowledge that this Agreement is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this Agreement, that this Agreement may be terminated, and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

19.13 Telephone Recording. Each Party to this Agreement acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

19.14 Disclaimer. Any inspection of Subscriber Organization's property or equipment by Company, or any review by Company or consent by Company to Subscriber Organization's plans or records, shall not be construed as an endorsement by Company of the design of the Project, does not constitute a warranty by Company as to the safety, durability or reliability of the Project, constitute control by Company over the Project, or otherwise relieve Subscriber Organization of any of its obligations or potential liabilities under the Agreement or impose any obligation or liability on Company.

*Signature page(s) follow*

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be duly executed as of the date first above written. This AGREEMENT shall not become effective as to either Party unless and until executed by both Parties.

EL PASO ELECTRIC COMPANY

By \_\_\_\_\_

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

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

SUBSCRIBER ORGANIZATION

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

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

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

**EXHIBIT A**  
(to Community Solar Organization Agreement)  
**DEFINITIONS**

The following terms, when used in the Agreement, shall have the meanings set forth herein:

**“AC”** means alternating electric current.

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

**“Affiliate”** of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. For purposes of this definition, the term “control” (including the terms “controls,” “under the control of” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership, by contract, or otherwise.

**“AGC”** stands for **“Automatic Generation Control”** and means energy management system equipment that automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Company’s representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

**“Agreement”** means this Community Solar Subscriber Organization Agreement, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time.

**“Allocation”** shall mean the monthly allocation, stated in kilowatts as a share of the total Nameplate Capacity of the Project, attributable to a Subscriber with respect to the Project under the terms of the subscription. The Subscriber Organization is required to timely provide the Subscriber’s Allocation to Company on a monthly basis in accordance with this Agreement, the Community Solar Act, and the Program Materials.

**“Applicable Law”** means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, tariffs, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this Agreement and matters related to this Agreement, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions.

**“Average Annual Generation”** has the meaning set forth in Section 2.2.

**“Bankruptcy Code”** means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

**“Base Schedule”** means an energy schedule that provides Subscriber Organization forecast data and other information that is used by the Company as a baseline.

**“Billing Data”** has the meaning set forth in the Program Materials, and in addition includes any data or information now or hereafter required to be provided by Subscriber Organization to Company for calculation of community solar bill credits under the Community Solar Act, the Program Materials, or other Applicable Law.

**“Business Day”** means any calendar Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

**“Change of Control”** means any circumstance in which Ultimate Parent ceases to own, directly or indirectly, at least fifty percent (50%) of the outstanding equity or voting interests in Subscriber Organization.

**“Commercial Operation(s)”** means when: (a) 100% of the nameplate capacity of the Project is installed; (b) the Project has operated and is capable of operating on a sustained basis without experiencing any abnormal or unsafe operating conditions, as witnessed and deemed capable by Company personnel at the Project site; (c) all Governmental Approvals necessary to authorize the production and, if applicable, delivery to Company of Photovoltaic Energy generated by the Project have been obtained; (d) the Project is authorized to operate by Company; (e) an Interconnection Agreement has been entered into between Company and Subscriber Organization and the Project has been interconnected with Company’s electric system pursuant to the Interconnection Agreement; (f) Subscriber Organization has satisfactorily completed the Commissioning Tests identified in Exhibit E in accordance with mutually agreed test procedures and other testing in accordance with Interconnection Agreement requirements, and (g) Subscriber Organization has obtained required insurance coverage.

**“Commercial Operation Date”** means the date on which Commercial Operation has commenced.

**“Commercial Operation Year”** means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the first day of the calendar month following the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the first day of the calendar month following the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

**“Company”** has the meaning set forth in the Preamble.

**“Confidential Information”** has the meaning set forth in Section 18.1(C).

**“Day(s)”** means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

**“DC”** means direct current.

**“Defaulting Party”** means the Party with respect to which an Event of Default under Article 9 has occurred.

**“Delivery Term”** has the meaning set forth in Section 5.1.

**“Disclosing Party”** has the meaning set forth in Section 18.1(A).

**“Early Termination Date”** has the meaning set forth in Section 9.4.

**“Electric Metering Device(s)”** means all metering and data processing equipment used to measure, record, or transmit data relating to the Solar Energy Output generated by the Project. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

**“Emergency Condition(s)”** means (a) a condition or situation that presents a physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Company to cause a significant disruption to the T&D System or otherwise be required in accordance with the requirements of WECC, or (b) any system condition not consistent with Prudent Utility Practice.

**“Environmental Attributes”** means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project’s generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled,

(i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Photovoltaic Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (i) tax benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (iii) any Photovoltaic Energy, reliability or other power attributes from the Project.

**“Event of Default”** means an Event of Default of Subscriber Organization as set forth in Section 9.1 or an Event of Default of Company as set forth in Section 9.2.

**“Execution Date”** has the meaning set forth in the Preamble.

**“FERC”** means the Federal Energy Regulatory Commission or any successor agency.

**“Force Majeure Event”** has the meaning set forth in Section 11.1(A).

**“Governmental Approval(s)”** means any authorization, consent, permission, registration, approval (including an NMPRC approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation by, any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this Agreement or the procurement pursuant to this Agreement of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation with regard to any, Non-Governmental Compliance Obligations.

**“Governmental Authority”** means any federal, tribal, state, local, or municipal governmental body, 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; or any court or governmental tribunal.

**“Governmental Charges”** means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person who has lawful authority or jurisdiction over either Party, including local, state or federal regulatory or taxing authorities that would affect the acquisition of Solar Energy Output contemplated by this Agreement, either directly or indirectly.

**“House Power”** has the meaning set forth in Section 1.3.

**“Interconnection Agreement”** means the separate agreement between Subscriber Organization and the Company for interconnection of the Project to the T&D System, as such agreement may be amended from time to time.

**“Interconnection Facilities”** means the T&D Interconnection Facilities and Subscriber Organization’s Interconnection Facilities.

**“Interconnection Rules”** means the rules and regulations for interconnection of generating facilities with a nameplate rating up to and including 10 MW connecting to a utility system, as contained in

17.9.568.1 NMAC, as that rule may be modified or supplemented from time to time, together with any tariff or procedure of the Company issued in connection therewith.

**“kW”** means one or more kilowatts AC of electricity, as the context requires.

**“kWh”** means kilowatt hour AC.

**“Losses”** has the meaning set forth in Section 16.1.

**“Market Event”** has the meaning set forth in Section 5.4.

**“Metered Output”** means the Photovoltaic Energy net of appropriate line losses made available from the Project (without netting or offset for House Power or other load served by Company) at the Point of Delivery, as measured by the Electric Metering Devices.

**“Month”** means a calendar month.

**“Mountain Prevailing Time”** or **“MPT”** means the time in effect in the Mountain Time Zone of the United States of America, whether Mountain Standard Time or Mountain Daylight Saving Time.

**“MW”** means megawatt or one thousand (1,000) kW AC.

**“MWh”** means megawatt hours AC.

**“NERC”** means the North American Electric Reliability Corporation or any successor organization.

**“NMPRC”** or **“Commission”** means the New Mexico Public Regulation Commission or any successor agency.

**“Non-Defaulting Party”** means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 9.

**“Non-Governmental Compliance Obligations”** means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, WECC, and all other applicable agencies, self-regulatory organizations and industry committees to which the Party is required to have membership and/or submit to jurisdiction in the performance of this Agreement.

**“Operating Records”** means all agreements associated with the Project, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including but not limited to supply contracts, contracts for the manufacture and installation of the generating equipment and generator step-up transformer, material engineering and other drawings (including as-built drawings or surveys) and construction contracts, results of all tests, including Commissioning Tests, and environmental permits, plans, and studies, whether in printed or electronic format, that Subscriber Organization uses or maintains for the operation of the Project.

**“Outage Notice”** has the meaning set forth in Section 5.5.

**“Party”** or **“Parties”** has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

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

**“Photovoltaic Energy”** shall mean the electric energy generated from the Project, expressed in units of kWh or MWh, using solar radiation energy to generate electricity delivered to Company and measured at the Electric Metering Device(s). Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

**“Point of Delivery”** means the electric system point at which Subscriber Organization makes available to Company and delivers to Company the Solar Energy Output being provided by Subscriber Organization to Company under this Agreement. The Point of Delivery shall be specified in Section 2.2 and Exhibit C to this Agreement, and, unless otherwise specified, is the point at which the Project interconnects to the T&D System.

**“Program Materials”** means the Company’s applicable community solar bill credit tariff or an equivalent rate schedule or other tariff that governs the relationship between a Subscriber Organization and Company, (together with all exhibits, schedules and attachments thereto) as approved by the NMPRC.

**“Project”** means Subscriber Organization’s solar energy generation facility with a nameplate capacity of \_\_\_\_\_ (\_\_\_\_\_)MW at the Point of Delivery located in \_\_\_\_\_ County, New Mexico which will produce the Solar Energy Output made available to Company under this Agreement, including one or more of Subscriber Organization’s Solar Units and Subscriber Organization’s Interconnection Facilities, as identified and described in Article 2 and Exhibit B to this Agreement, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Subscriber Organization’s equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, facilities necessary to connect to the Point of Delivery, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this Agreement.

**“Project Owner”** has the meaning set forth in Section 1.4.

**“Project Schedule”** has the meaning set forth in Section 2.3.

**“Prudent Utility Practice(s)”** means the practices, methods, and use of certain equipment as changed from time to time, that are commonly used and accepted in electrical engineering and operations to operate electric equipment lawfully, safely, dependably and efficiently, including, but not limited to the requirements of the National Electric Safety Code, the National Electrical Code, NERC standards procedures and any governmental code or regulation.

**“Qualified Operator”** is (a) a Person that has at least three (3) years’ experience with operating at least fifty (50) MW of community solar generation, or (b) any other Person reasonably acceptable to Company.

**“Qualifying Subscriber”** means a Subscriber that is an eligible retail electric service customer of Company who qualifies as a Subscriber in accordance with the provisions of the Community Solar Act and otherwise meets the requirements of this Agreement, the Program Materials, or Applicable Law.

**“Receiving Party”** has the meaning set forth in Section 18.1(A).

**“Receiving Party’s Representatives”** has the meaning set forth in Section 18.1(B).

**“Recording”** has the meaning set forth in Section 19.13.

**“Renewable Energy Certificate”** or **“REC”** means a document evidencing that the amount of renewable energy shown on the document has been generated from the Project and certified as such by

WREGIS. For purposes of this Agreement and registration with WREGIS, RECs are accumulated on a MWh basis with one (1) REC for each MWh of renewable energy generated. RECs include all Environmental Attributes associated with the generated energy. "RECs" excludes (i) any local, state or federal investment tax credit, production tax credit, depreciation deductions or other tax benefit to Subscriber Organization based on ownership of, or Photovoltaic Energy production from, any portion of the Project, including the tax benefits, (ii) depreciation and other tax benefits arising from ownership or operation of the Project unrelated to its status as a generator of renewable or environmentally clean energy, and (iii) any Photovoltaic Energy, reliability or other power attributes from the Project.

**"Scheduled Maintenance Outage"** means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this Agreement, or as otherwise agreed by Subscriber Organization and Company.

**"Site"** means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. For the avoidance of doubt, this Agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Subscriber Organization's Interconnection Facilities) will require prior Company approval, not to be unreasonably withheld.

**"Solar Capacity"** has the meaning set forth in Section 2.2.

**"Solar Energy Output"** means Metered Output, Environmental Attributes (including RECs), and capacity generated by the Project.

**"Solar Energy Output Payment"** means for (i) Subscribed Energy, the community solar bill credit, as set forth in Rate No. 47, Community Solar Program Rate and (ii) Unsubscribed Energy, the applicable avoided cost of energy rate, each determined, as applicable, by the Program Materials, Rate No. 16 and the Community Solar Act—all of which may be amended from time to time.

**"Solar Unit(s)"** means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

**"Subscribed Energy"** means electricity, measured in kilowatt-hours, generated by a Project and delivered to Company on or after the first day of the calendar month following Commercial Operation Date that is subject to a Subscriber's Allocation.

**"Subscriber"** shall mean the retail electric service customer of the Company who meets the definition of a Subscriber under the Community Solar Act and: (a) has subscribed for the Project; (b) the Subscription is attributed to one or more premises served by Company where it is the customer of record; (c) has entered into a subscription agreement with the Subscriber Organization; (d) is identified in the Billing Data by the Subscriber Organization to the Company as a Subscriber for the Project, and (e) is a Qualifying Subscriber.

**"Subscriber Organization"** has the meaning set forth in the Preamble.

**"Subscriber Organization Excused Hours"** means those hours during which Subscriber Organization is unable to schedule or deliver Photovoltaic Energy to Company as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, or (c) any breach or failure by Company to perform a material obligation under this Agreement (other than due to a breach by Subscriber Organization of its obligations under this Agreement).

**"Subscriber Organization Forced Outage"** means an unplanned reduction, interruption or suspension not associated with Subscriber Organization Excused Hours of all or a portion of Photovoltaic

Energy deliveries from the Project to the Point of Delivery.

**“Subscriber Organization Permitted Transfer”** means any of the following: (a) a Change of Control; (b) the direct or indirect transfer of shares of, or equity interests in, Subscriber Organization to a *bona fide* tax equity investor, the collateral assignment of equity interests in Subscriber Organization or this Agreement to a *bona fide* lender or tax equity investor providing financing and/or refinancing for the Project; or (c) a transfer of all or substantially all of the assets of Subscriber Organization’s Ultimate Parent in a single transaction; *provided*, that in the case of each of (a), (b) or (c), following such transfer the assignee is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project).

**“Subscriber Organization’s Interconnection Facilities”** means the equipment between the high side disconnect of the step-up transformer and the Point of Delivery, including all related relaying protection and physical structures as well as all transmission or distribution facilities required to access the T&D System at the Point of Delivery, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, “Subscriber Organization’s Interconnection Facilities” includes Subscriber Organization’s metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this Agreement.

**“Subscription(s)”** has the meaning defined in the Community Solar Act.

**“System Control Center”** or **“SCC”** means Company’s representative(s) responsible for dispatch of generating units, including the Solar Units.

**“Taxes”** means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

**“Term”** means the period during which this Agreement shall remain in full force and effect, and which is further defined in Article 2.

**“T&D Curtailment(s)”** means curtailments of Photovoltaic Energy from the Project directed by the Company (or the BAA) due to any of the following reasons (a) an unplanned or planned component failure or other condition that requires all or a portion of the T&D Interconnection Facilities or T&D System to be removed from service immediately, (b) the removal of the T&D Interconnection Facilities or T&D System from service to perform repairs, whether scheduled or unscheduled, (c) the BAA curtails or otherwise reduces the Metered Output in order to meet NERC/WECC standards criteria in regard to compliance obligations to the Company Balancing Area (as defined by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time) and/or T&D System to operate within system limitations or other operating areas as directed by the Reliability Coordinator, (d) for safety or equipment failure situations, (e) a general curtailment, reduction or redispatch of generation in the area for any primary reason other than any economic purpose or to accomplish least cost dispatch, or (f) any other right of suspension of delivery of Photovoltaic Energy from the Project or disconnection of the Project pursuant to the Interconnection Agreement (including failure to meet technical requirements set by the Company for inverter settings or in the case the Projects is designated as non-export or limited export or other special status). For the avoidance of doubt, a T&D Curtailment includes curtailments associated with an oversupply of generation on the T&D System during a period of time when generating facilities connected to the T&D System are interrupted or reduced in an equitable and non-discriminatory manner, but shall not include any curtailment primarily for any economic purpose or to accomplish least cost dispatch.

**“T&D Interconnection Facilities”** means the facilities necessary to connect the Company’s T&D System to the Point of Delivery, including breakers, bus work, bus relays, and associated equipment installed by the Company for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements

for the installation and operation of the Company's Interconnection Facilities shall be governed by the Interconnection Agreement.

**"T&D System"** means the contiguously interconnected electric transmission, sub-transmission and/or distribution facilities over which the Company has rights (by ownership or contract) to provide transmission (including over any distribution facilities) of capacity and energy from the Point of Delivery.

**"Ultimate Parent"** means \_\_\_\_\_. *NTD: This definition should be deleted if the Subscriber Organization is not owned by a parent company.*

**"Unsubscribed Energy"** means (i) Metered Output which is not attributable to a Subscriber and delivered to Company on or after the first day of the calendar month following the Commercial Operation Date, as further defined (as "unsubscribed electricity") in the Community Solar Act and (ii) any Solar Energy Output for a partial month after Commercial Operation has commenced but prior to the first day of the calendar month following the Commercial Operation Date.

**"WECC"** means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

**"WREGIS"** means the Western Renewable Energy Generation Information System or any successor system.

**EXHIBIT B**  
(to Community Solar Organization Agreement)  
**DESCRIPTION OF SUBSCRIBER ORGANIZATION'S GENERATION FACILITIES, SITE MAP AND  
PROJECT SCHEDULE**

1. Name of Subscriber Organization's Project: \_\_\_\_\_
2. Location: \_\_\_\_\_
3. Owner (if different from Subscriber Organization): \_\_\_\_\_
4. Operator (Subscriber Organization or Affiliate thereof): \_\_\_\_\_
5. Equipment/Fuel:
  - a. Type of facility and conversion equipment (e.g., Solar PV;): \_\_\_\_\_
  - b. Total number of units at the Project: \_\_\_\_\_
  - c. Total nameplate capacity (MWp): \_\_\_\_\_ MWdc
  - d. Total capacity at point of delivery: \_\_\_\_\_ MWac
  - e. Additional technology-specific information: \_\_\_\_\_
6. Schedule

Schedule:

Key Milestone	Date
Interconnection Agreement Execution	
Major Equipment Supply Agreements Executed	
Discretionary Permits	
Close Financing	
Start of Project Construction	
First Major Equipment Delivered to Site	
Interconnection In-Service Date	
Commissioning Start Date	
Expected Commercial Operation	

7. Site Map: Attach a scaled map that complies with the requirements of Section 2.4 of the AGREEMENT.

**EXHIBIT C**  
(to Community Solar Organization Agreement)

**ONE-LINE DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram of the Project. The one-line diagram indicates the following:

- Interconnection Facilities;
- the network upgrades;
- The House Power source and associated dedicated electric metering device; and
- ownership and location of meters.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation supporting the identified status and milestone dates.

3. Subscriber Organization shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is \_\_\_\_\_.

**EXHIBIT D**  
(to Community Solar Organization Agreement)  
**NOTICE ADDRESSES**

<b>EL PASO ELECTRIC COMPANY</b>	
<p><b>Notices:</b></p> <p><b>Delivery Address:</b> El Paso Electric Company P.O. Box 982 El Paso, Texas 79960</p> <p><b>Invoices:</b> Attn: _____ Phone: _____ Fax: _____ Email: _____</p> <p><b>Payments:</b> _____</p> <p><b>Wire Transfer:</b> _____ ABA# _____  ME Whsle Pwr Depository: Attn: _____</p> <p><b>Contract Manager:</b> _____ Attention: _____ Address: _____ Telephone: ( ) _____ Fax: ( ) _____</p> <p><b>With additional Notice of an Event of Default, termination and other legal notices to:</b> _____ Attention: _____ Address : _____ Telephone: (505) _____ Fax: (505) _____</p> <p><b>With a copy to:</b> _____ Attention: Legal Department _____ Email: _____ Fax: (505) _____</p>	<p><b>All Notices/Invoices:</b></p> <p><b>Delivery Address:</b> _____ Attn: _____ Phone: _____</p> <p>With copy to: _____ Attn: _____ Phone: _____</p> <p>Mailing Address (if different from above): _____</p> <p><b>Wire Transfer:</b> _____</p> <p><b>With additional Notice of an Event of Default, termination and other legal notices to:</b> _____ Attn: _____ Address: _____ Phone: _____</p> <p>Attn: _____ Address: _____ Phone: _____</p> <p><b>Project Manager:</b> _____ Attn: _____ _____</p> <p><b>Project Owner:</b> _____ Attn: _____ _____</p>

**EXHIBIT E**  
(to Community Solar Organization Agreement)

**RESERVED**