



**NON-RESIDENTIAL SOLAR WATER / PROCESS / SPACE HEATING SYSTEM
CREDIT PURCHASE AGREEMENT**

APS Renewable Energy Incentive Program Reservation # _____ for Renewable Energy System permanently located at: _____ (the “Property”).

- 1) Customer agrees that approval of the Credit Purchase Agreement (“CPA”) does not entitle Customer to any payment from APS; Customer must comply with all terms and conditions of the CPA in order to receive payment. **If approved, Customer has 180 days from the date of this CPA to purchase and install a system that meets the requirements set forth in Paragraph 3 below.**
- 2) As with any significant purchase, customer is encouraged to shop around when considering a renewable energy system and should check references and otherwise perform its own due diligence with respect to any installer that it hires. APS does not endorse the workmanship of any contractor, nor does it guaranty, warranty, or in any way represent or assume liability for any work proposed or carried out by any contractor. Customer shall remain solely and exclusively responsible for the selection of the installer and APS shall have no liability with respect to the installer or its work.
- 3) **APS will require dealer, installer and the Customer to execute an Acceptance and Commissioning of Solar Water / Process / Space Heating System Agreement (the “Commissioning Form”) certifying that the System meets the foregoing requirements.** The parties acknowledge and agree that the Credit Purchase Payment (“CPP”) is specifically conditioned upon the System meeting such requirements and upon APS’ acceptance and approval of the Commissioning Form. APS reserves the right to inspect the System to ensure conformance to such requirements prior to the approval of the Commissioning Form. Customer agrees to make the System and/or the Property available to APS for such inspection within a reasonable time following request by APS. Notwithstanding the inspection rights afforded to APS in this paragraph, Customer shall retain control of and liability for the System and the Property as otherwise established in this CPA including, but not limited to, the provisions of Paragraphs 10 and 13 herein.
- 4) APS will pay a one-time incentive of up to \$0.41 per Watt for the first year’s kWh savings (based on the ES&D Report) limited to 50% of the system cost or the amount requested on the approved reservation application (a copy of which is attached as Exhibit A), whichever is less. In no situation may the incentive exceed \$75,000. Dealers and manufacturers incentives are capped at 50% of the system cost basis. Dealers cannot include installation in the cost basis. Dealers must be able to verify the cost they paid for each system component. Manufacturers cannot include their own technology in the cost basis. Customer may direct that the CPP be made by APS to the installer, dealer, or manufacturer designated by Customer on the Commissioning Form; provided, however, that APS will not make payment to any designated third party unless and until it receives written acceptance of the System from Customer as part of the Commissioning Form. The CPP represents APS’ sole obligation to Customer under the terms of this CPA.
- 5) The Parties agree that if Customer fails to maintain and operate the System on the Property for twenty (20) years from the date that it receives the CPP, then Customer shall be in Default under this CPA. Customer must notify APS within five (5) business days after the System is either removed from the Property or is no longer operational (the “Removal Date”).

Liquidated damages shall apply if Customer fails to maintain and operate the System for a period of twenty (20) years from the date that it receives the CPP. In such event, APS shall be entitled to an undiscounted pro-rated refund (based on 240 months) of the CPP based on the Removal Date. Customer shall submit payment to APS in certified funds no later than five (5) business days after the Removal Date. We may, in our sole discretion, waive the foregoing reimbursement obligation or any other instance of your noncompliance if we determine that the System is

not operational due to equipment malfunction or other disrepair that is not attributable to you and you are actively and reasonably making diligent, good faith efforts to repair the System and return it to operation.

The foregoing stipulations shall also apply in the event that Customer sells the Property, as follows: (a) Customer shall notify APS in writing promptly in the event that Customer sells the Property; (b) if Customer sells the Property less than one (1) year after it receives the CPP and the subsequent owner does not continue to operate and maintain the System and grant APS full title to and ownership of all environmental credits associated with the system, Customer must reimburse to APS the total amount of the CPP as set forth above ; and (c) if Customer sells the Property more than one (1) year after it receives the CPP, it shall be subject to the Default provisions contained in the preceding paragraph and Paragraph 11, but APS shall waive its right to enforce such provisions against Customer if and while the subsequent owner of the Property continues to operate and maintain the System and grants APS full title to and ownership of all environmental credits associated with energy produced by the System.

If Customer reimburses APS in accordance with this Paragraph 5, this CPA shall terminate effective as of the date that APS receives such reimbursement. Upon such termination, neither APS nor Customer shall have any further obligation to one another under this CPA except that the provisions contained in Paragraphs 6, 10 and 12 shall survive any such termination, together with any other provisions that survive termination by operation of law.

- 6) For each kWh saved by the System (based on the ES&D Report), there is an associated environmental credit. Title to and ownership of any and all environmental credits associated with Customer's System shall pass from Customer to APS upon payment of the CPP and APS shall maintain title to and ownership of all such environmental credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation of energy from the System. The calculation, use and retirement of any and all environmental credits shall be in the sole and exclusive discretion of APS. **Acceptance of the CPP by Customer shall operate as a waiver by Customer of any right, title or interest in the environmental credits and shall entitle APS to any and all environmental credits associated with Customer's System both presently and in the future.**
- 7) Customer shall be solely responsible for the payment of any and all taxes applicable to the System and/or the CPP. Our Program requires that the installer provide the customer with a minimum of a five year equipment warranty as provided by the system manufacturer, including a minimum warranty period of two years for repair/replacement service. The remaining operational life must be supported by a planned maintenance or equipment replacement schedule.
- 8) APS shall have the right, at any time, to publish information about Customer in connection with its renewable energy programs including, but not limited to, Customer's name, Customer's participation under this CPA, the results of Customer's participation, and any payments made to Customer pursuant to this CPA. Customer affirmatively waives any cause of action that may arise out of or relate to APS' publication of such information. Customer shall not use APS' name or the name of the APS Renewable Energy Incentive Program in any of its written materials including, but not limited to, advertising and promotional materials, without the prior express written consent of APS.
- 9) Customer understands and agrees that it is solely responsible for, and bears any and all liability for, the payment of all costs associated with the purchase and installation of the System. Customer agrees that any failure of the System shall be the responsibility of Customer and/or the installer and not the responsibility of APS. Additionally, APS is not responsible for ensuring that the design, engineering, or construction of the System is proper or complies with any particular laws, regulations, codes, licensing, certification and permit requirements or industry standards. APS provides no warranty of any kind, whether express or implied, with respect to the System and/or its installation, manufacture, or reliability, nor does APS warrant or guarantee the amount of energy or energy savings that may be produced by the System. **In no event shall APS be liable to customer for any consequential, special, incidental exemplary or punitive damages in connection with the System and/or its installation, maintenance, or use.**

In addition, you specifically agree to use the following APS approved language in connection with this transaction in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service.

"The installation was facilitated, in part, by the APS Renewable Energy Incentive Program. This Program offers financial incentives to customers who add Renewable Energy systems to their homes or business. The Program is funded by APS customers and approved by the Arizona Corporation Commission."

Any other language used in connection with such public communications that specifically relates to the APS Renewable Energy Incentive Program or this Contract must be approved in advance by APS.

- 10) It is the Customer's sole responsibility to be informed about and understand any covenants or restrictions that may impact its ability to enter into and comply with the terms of this CPA, whether they are federal, state or local, including, but not limited to, homeowners' association covenants or other local neighborhood restrictions. The existence of any such covenants or restrictions, whether in place at the time this CPA is executed or instituted at any time thereafter, **shall not** excuse Customer's performance under this CPA, and Customer shall be bound to comply with the terms of this CPA notwithstanding any such covenants or restrictions.
- 11) Customer's failure at any time to fully comply with its obligations set forth herein shall be deemed a default under this CPA ("Default"). In the event of Default, APS shall have the right to any applicable liquidated damages pursuant to Paragraph 5 of this CPA, as well as any other damages that may be available to it at law or in equity.
- 12) If any claim of any nature is made by Customer and/or any third party with respect to Customer's System, Customer expressly agrees to indemnify APS and hold it harmless against such claims and any costs and expenses incurred by APS in connection with such claims.
- 13) This CPA shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to its principles of conflicts of laws.
- 14) Any dispute relating to this CPA, or the breach thereof, shall be submitted to binding arbitration. The arbitration shall be conducted in Phoenix, Arizona and shall be conducted by an arbitrator selected by, and in accordance with the rules of the American Arbitration Association. All costs and expenses of the arbitrator shall be borne equally by the Parties. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that the arbitrator shall have no authority to award consequential, treble, exemplary or punitive damages of any type, regardless of whether such damages may be available under any law or right and the Parties hereby affirmatively waive their rights, if any, to recover or claim such damages.
- 15) If any provision of this CPA (or any portion thereof) is found to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this CPA shall not in any way be affected or impaired thereby.
- 16) The Parties agree that this CPA represents the entire agreement between the Parties with respect to the purchase, installation, maintenance and use of the System by Customer and APS' payment of the CPP to Customer for the same. This CPA may not be modified or amended in any way except by a writing signed by both of the Parties.

CUSTOMER

 Name (Please Print)

 Signature

 Date

**EXHIBIT A
RESERVATION APPLICATION
[ATTACHED]**