Apache II Resale Agreement

between

Southwest Public Power Agency

and

Participants

This Apache II Agreement ("Agreement") is made this date _______________, (the "Effective Date") by and among Southwest Public Power Agency (hereinafter "SPPA"), a political subdivision of the State of Arizona, organized and existing under the laws of the State of Arizona, including particularly the Act, and the other Persons that executed this Agreement as of the Effective Date or that become a party hereto thereafter (hereinafter "Participants" or, at times, individually as "Participant"). SPPA and Participants hereinafter referred to collectively as "Parties" or, at times, individually as "Party".

WITNESSETH:

WHEREAS, SPPA consists of members ("Members") which are (i) governmental entities organized and existing under the laws of the State of Arizona, and (ii) authorized by such laws to engage in the local distribution and sale of electric power and energy; and

WHEREAS, SPPA is authorized under Sections 2(n) and 4 of its IGA to contract with its Members to establish projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate economical and reliable supply of electricity and related products for its Members; and

WHEREAS, SPPA and its Members have established the SPPA Power Purchase Project Agreement, SPPA Project Contract 2021-2, effective on March 14, 2022, which authorizes SPPA to enter into power purchase agreements with Sellers to obtain Energy, Capacity Rights, Ancillary Services and Environmental Attributes for the benefit of subscribing Participants, and

WHEREAS, SPPA is authorized by Section 5(b) of the IGA to allow eligible non-member entities to participate in such Projects (Members and such nonmember entities participating in Projects to be referred to collectively as "Participants"); and

WHEREAS, Article 3 of the SPPA Power Purchase Project Agreement contemplates additional PPAs being added to the Project upon approval of the Project Management Committee; and

WHEREAS, SPPA intends to enter into a series of related agreements to acquire the output of a portion of a combined photovoltaic and battery storage facility from AEPCO for a period of twenty (20) years commencing on the Commercial Operation Date, whereunder SPPA will purchase, on a combined basis and on behalf of the Participants, a defined percentage of usable output from the Apache II Facility, including but not limited to the Energy, Capacity Rights, Ancillary Services and Environmental Attributes of Apache II (hereinafter referred to as the "Product" and which is defined in Article One), as components of the Product becomes available; and

WHEREAS, in October 2023 SPPA has executed the Apache II Solar Planning and Subscription Agreement (the "Solar Subscription Agreement") and the Apache II Storage Planning and Subscription Agreement (the "Storage Subscription Agreement"), in which Section 5 of each of those agreements SPPA commits to execute the Solar PPA and Battery ESA at a future date when they became available, and per SPPA Board of Directors Resolution 2023-10-001 SPPA and its Members desired for the SPPA PPA Project Committee to include the Apache II arrangement in the PPA Project, with a corresponding back-to-back Resale Agreement;

WHEREAS, SPPA has become a Class B member of AEPCO, and AEPCO has presented to SPPA (1) Apache II Solar Class B Power Purchase Agreement, and (2) Apache II Storage Class B Energy Storage Agreement (together, the "Apache II Agreements"), which each address certain aspects of the structure, sharing, construction, operation, of the Apache II facility; and

WHEREAS, SPPA, its Members, and the Participants to the PPA Project agree that the rights and obligations associated with the Apache II facility operate as one PPA as the term is used in the SPPA PPA Project Agreement, notwithstanding the fact that AEPCO has presented terms of the undertaking across two separate agreements with SPPA;

WHEREAS, SPPA, its Members, and the Participants to the PPA Project desire to include the Apache II Agreements in the SPPA PPA Project;

WHEREAS, Participants own and operate retail electric systems;

WHEREAS, Participants are authorized under the laws of the State of Arizona to contract to buy from SPPA Energy, Capacity Rights, Ancillary Services and Environmental Attributes to meet a Participant's present and future requirements; and

WHEREAS, this Agreement is intended to enable SPPA to pass through a share of the benefits and obligations of the Apache II Agreements to Participants, such that neither SPPA nor Participants obtain a benefit or incur a burden or obligation due to a drafting or other difference between this Agreement and the Apache II Agreements.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE: DEFINITIONS

Any capitalized words used but not defined in this Agreement or its Schedules shall have the meaning as defined in the Apache II Agreements or the SPPA Project Contract 2021-2. Any definitions from the Apache II Agreements (whether explicitly defined herein or not) shall automatically reflect the definitions from the Apache II Agreements as it may be amended from time to time.

Act means A.R.S. Section 11-952, as amended, and all laws amendatory or supplemental thereto.

Agreement means this Apache II Resale Agreement between Participants and SPPA.

Ancillary Services means the Ancillary Services as the term is defined in each of the Class B PPA and Class B ESA.

Apache II Facility shall be defined to include each of the Generation Facility as defined in the Class B PPA, and the Project as defined in the Class B ESA.

Class B ESA means the Apache II Storage Class B Energy Storage Agreement between AEPCO and SPPA, substantially in the form of the document attached as **EXHBIT F**, which will be updated as executed and amended from time to time.

Class B PPA means the Apache II Solar Class B Power Purchase Agreement between AEPCO and SPPA, substantially in the form of the document attached as **EXHBIT G**, which will be updated as executed and amended from time to time.

Apache II Agreements means all of the Solar Subscription Agreement, Energy Storage Subscription Agreement, the Class B PPA, and the Class B ESA.

Business Day means any weekday (*i.e.*, other than Saturday or Sunday) that is not a holiday observed by the Federal Reserve.

SPPA Working Capital Reserve Account means the account or accounts SPPA is required to fund pursuant to Article 9.2 of the Class B PPA and Article 9.2 of the Class B ESA.

Buyer Working Capital Reserve Amount shall be the total amount SPPA must fund the SPPA Working Capital Reserve Account pursuant to Article 9.2 of the Class B PPA, Article 9.2 of the Class B ESA, and any further amount required by the PPA Project Management Committee.

Capacity Rights means the Capacity Rights as the term is defined in each of the Class B PPA and Class B ESA.

Commercial Operation Date means the date that the Apache II facility achieves Commercial Operation as Commercial Operation as defined in the Apache II Agreements.

Contract Interest Rate is the Interest Rate as defined in each of the Class B PPA and Class B ESA.

Contract Year means any consecutive twelve (12) month period during the term of the Apache II Agreements, commencing at 00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00 hours on the last day of such twelve (12) month period.

Delivery Point is defined and described in Exhibit B of each of the Class B PPA and Class B ESA.

Effective Date means the date as of which this Agreement has been executed by SPPA and the initial Participants, as reflected on the signature page(s). For new Participants after the original Effective Date, the Effective Date will be the date when both the new Participant and SPPA have executed the form of Participation Agreement attached as Exhibit A.

Energy means electricity, measured in kWh or MWh, as the case may be.

Environmental Attributes means the Environmental Attributes as the term is defined in each of the Apache II Agreements.

Event of Default shall have the meaning assigned to it in Section 11.1.

FERC means the Federal Energy Regulatory Commission, or its successor in function.

Governmental Authority shall have the meaning assigned to it in the Apache II Agreements. Governmental Authority does not include SPPA or the Participants.

IGA means the Intergovernmental Agreement among SPPA's members dated July 31, 2014, which caused SPPA to be created.

Members means all members of SPPA, who are party to the IGA.

NERC means the North American Electric Reliability Corporation.

Participant means each SPPA Pool Participant that (i) has agreed to participate in this Project by executing the SPPA Power Purchase Project Agreement as of the Effective Date thereof (or for new Participants after the Effective Date, by executing a form of Participation Agreement attached thereto as Exhibit A); and (ii) has executed this Agreement as of the Effective Date hereof (or for new Participants after the Effective Date, that have executed a form of Participant Agreement attached hereto as Exhibit A), and in each case its permitted successors and assigns.

Participant Entitlement means the amount of Product which is the Participant's individual allocation of Product from the Apache II Agreements, inclusive of solar rights and storage rights. The initial Participant Entitlement is set forth in Schedule 4.1. Any Participant Entitlement may be adjusted from time to time pursuant to this Agreement.

Participant Percentage means the average of the fraction equal to the Solar Participant Entitlement divided by SPPA's purchase amount under the Class B PPA, expressed as a percentage, and the fraction equal to the energy services Participant Entitlement divided by SPPA's purchase amount under the Class B ESA, expressed as a percentage.

Participation Agreement means an agreement signed by SPPA and a new Participant after the Effective Date of this Agreement, whereby such entity becomes a new Participant. A form of Participation Agreement is attached as Exhibit A.

Payment Default shall have the meaning assigned to it in Section 11.1(a).

Person means an individual, a corporation, a partnership, a limited liability company, a tribal entity, an association, a joint-stock company, a trust, an unincorporated organization or any government or political subdivision thereof.

Pool Agreement means the September 1, 2014 SPPA Project Agreement for the SPPA Pool among SPPA and certain of its Members, pursuant to which SPPA acquires and manages resources for the benefit of the SPPA Pool, as such agreement may be amended from time to time.

Product shall include each of the definitions of the term Solar Output as is defined in the Class B PPA and Product as defined in the Class B ESA, each including Test Energy.

Prudent Electrical Practices are defined in the Apache II Agreements.

Seller means the counterparty to SPPA under the Apache II Agreements, or its permitted successors and assigns.

Service Month means the month in which Product from Apache II is delivered.

Solar Project Account-Apache II means the operating sub-account into which SPPA deposits the payments by Participants in the Apache II Agreements and out of which it pays the expenses associated with the Apache II Agreements.

SPPA means the Southwest Public Power Agency, Inc. and its permitted successors and assigns. SPPA is a political subdivision of the State of Arizona created pursuant to the IGA, under the authority granted under the Act.

SPPA Energy Management Agreement means the February 13, 2024 Amended and Restated Energy Management Agreement between SPPA and Arizona Electric Cooperative ("AEPCo") wherein SPPA appoints AEPCo as the Administrative and Scheduling Agent for the SPPA Pool, as that agreement may be amended from time to time.

SPPA Pool means the power pool created by SPPA and some of its Members under Pool Agreement as such agreement may be amended from time to time.

SPPA Pool Management Committee means the Committee created under Article Seven of the Pool Agreement as such agreement may be amended from time to time.

SPPA Pool Participant means the parties, other than SPPA, to the Pool Agreement.

SPPA Power Purchase Project Agreement means the SPPA Project Contract No. 2021-2 (Power Purchase Agreement Project) or any substantially identical agreement entered into among SPPA and Participants.

Term means the period in which this Agreement is in effect as set forth in Article Two.

Test Energy is defined in Apache II Agreements.

Transmission Costs means Participant's properly allocable share of all transmission-related costs paid by SPPA for the month that are directly related to the delivery to Participant of Energy from Apache II and that are not otherwise reimbursed to SPPA by the Participant pursuant to any other agreement between the Parties. Such transmission-related costs may include, without limitation, costs of upgrades, and any costs associated with Transmission Congestion Rights, in each case arising in connection with the Apache II facilities.

Tribal Participant means a Participant that is a tribal utility of its respective Indian Tribe, Nation, and/or Community.

ARTICLE TWO: TERM

2.1 Term. This Agreement shall be effective and binding upon execution by the Parties as reflected on the signature page(s) below (or for later joining Parties, upon the date of execution of the form of Participation Agreement attached as Exhibit A), and (absent earlier termination as permitted hereunder) shall continue in effect until termination of each and every of the Apache II Agreements. Deliveries shall commence on the Commercial Operation Date and continue through the end of the Term.

(a) Member Terminations. Except as provided in this Section 2.1, the participation of individual Participants may not be terminated. If a Participant seeks to terminate its Participant Entitlement pursuant to Section 9.2, it shall provide written notice to SPPA and follow the procedures laid out in Section 9.2.

(b) SPPA may terminate the Agreement as to an individual Participant in the event that such Participant is in default, pursuant to the provisions of Article Eleven.

ARTICLE THREE: RELATIONSHIP TO OTHER CONTRACTS

3.1 Minimum Execution Level. SPPA is authorized by its Board of Directors and the Participants in the Apache II Project to execute the Class B PPA and the Class B ESA on final negotiation by SPPA management and counsel. Participants agree that the execution of this Agreement or a Participation Agreement shall be deemed Participant's full consent and agreement that SPPA, upon SPPA's execution of any of the Apache II Agreements, shall adjust each Participant's initial percentage subscription in the applicable Apache II Agreement pro rata to all Participants, such that all Product is allocated to the Participants upon the Commercial Operation Date.

3.2 SPPA Management. SPPA will manage the Apache II Agreements for the benefit of the Participants. SPPA's designated Administrative and Scheduling Agent will schedule and dispatch the resource pursuant to the terms of the Pool Agreement and the SPPA Energy Management Agreement.

3.3 SPPA Pool Resource Designation. SPPA and the Participants designate the Apache II Agreements as a SPPA Pool Resource, in accordance with the terms of the SPPA Pool Agreement. SPPA will optimize the Apache II Agreements with the other SPPA Pool Resources for the benefit of Participants.

3.4 Transmission. To the extent available, SPPA will use existing transmission entitlements that SPPA has arranged or that Members and Participants have designated as SPPA Pool Resources, or otherwise made available to SPPA to transmit the applicable Product from the Apache II Facility from the Delivery Point to Participant loads. To the extent that SPPA and the Participants do not have sufficient transmission rights to effect delivery to Participant loads, it may be necessary for SPPA or such Participants to secure additional transmission arrangements. Such Participants shall obtain such arrangements at their own expense, or reimburse SPPA for the expense of acquiring transmission for them. Payments from Participants for such additional transmission will be collected pursuant to a separate agreement.

ARTICLE FOUR: PURCHASE AND SALE

4.1 Product. Subject to and in accordance with the terms and conditions of this Agreement during the contract Term, SPPA shall sell and make available to Participants at the Delivery Point, or as otherwise provided, and Participants shall purchase and pay for Product in amounts set forth in Schedule 4.1 of this Agreement, such amounts to be scheduled in accordance with the provisions of the Pool Agreement.

4.2 Firmness. Energy produced by the photovoltaic portion of the Apache II Facility in accordance with the Class B PPA and Energy produced by discharge of the batteries pursuant to the Class B ESA will be scheduled as directed by SPPA's scheduling agent. Ancillary Services and Capacity Rights will be utilized as directed by SPPA or

SPPA's scheduling agent for monetization (per and subject to the provisions of Section 4.3 and Section 4.5 of this Agreement).

4.3 Resource Adequacy. To the extent regulatory requirements or market structure changes result in the establishment of a resource adequacy requirement or other form of capacity demonstration obligation in any balancing authority area where any Participant's load is located that requires such participant to identify specific generating resources underlying its firm power contracts, such participant shall be permitted to designate the Apache II Facility as such capacity (up to an amount equal to the product of the amount of the Apache II capacity qualified for resource adequacy purchased by SPPA under the Class B PPA and Class B ESA, and such Participant's Participant Entitlement of Capacity Rights).

4.4 Title and Risk of Loss. Title to and risk of loss related to Product shall transfer from SPPA to Participants at the Delivery Point or at such other time as specified in the Class B PPA and Class B ESA. SPPA will deliver to Participants the Product, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to delivery, at the Delivery Point.

4.5 Participant's Entitlement. Beginning on the Commercial Operation Date, Participant shall purchase its Participant Percentage of the Product that SPPA purchases pursuant to the terms and conditions of the Apache II Agreements. It is the intent of SPPA and the Participants that each Participant's Participant Percentage of the benefits and obligations accruing to SPPA under the Apache II Agreements shall be flowed through to the Participant pursuant to this Agreement. Accordingly, in the event of a conflict between the terms of this Agreement and the Apache II Agreements, the terms of the Apache II Agreements shall prevail and Parties shall look to the terms of the Apache II Agreements to resolve such conflict. The Participant Entitlements and Participant Percentages of all Participants shall be set forth in Schedule 4.1 attached to this Agreement. SPPA will update Schedule 4.1 periodically as necessary, including without limitation to reflect changes resulting from actions taken pursuant to Articles Nine, Eleven, and Twelve, and/or any other applicable provision of this Agreement.

4.6 Cost Responsibility. Each Participant will pay its allocable share (as determined pursuant to this Article Four) of (a) all charges SPPA incurs for Product in connection with the Apache II Agreements, (b) any other charges SPPA incurs under or in connection with the Apache II Agreements, including but not limited to funding the Buyer Working Capital Reserve Amount, and (c) all transmission costs SPPA incurs to deliver the Energy from the Delivery Point to the Participant; and (d) SPPA's administrative and other reasonable costs associated with its management of Apache II (which shall include an allocable share of SPPA's general costs of providing services that are not directly assignable to any given project) ("SPPA A&G"). Participant's obligation to pay for its allocable share of such costs shall be paid in accordance with Sections 4.7, 4.8 and 4.9 and shall continue until all amounts due hereunder are paid in full notwithstanding the occurrence of any event, the availability of the Product, or the taking of any action permitted by the Apache II Agreements, such as the need to fund Buyer Working Capital

Reserve Amount or post Buyers' Default Security. The provisions that follow are intended to implement, but not to narrow, this intention.

4.7 Buyer Working Capital Reserve Account. In accordance with the terms of the Class B PPA and Class B ESA, SPPA will establish a Buyer Working Capital Reserve Account with a starting balance at least 30 days prior to the expected Commercial Operation Date and throughout the Term of at least the Buyer Working Capital Reserve Amount. The Buyer Working Capital Reserve Account may be held by either SPPA or Seller. Amounts in the Buyer Working Capital Reserve Account may only be used by SPPA to make payments to Seller that are due and payable pursuant to the Apache II Agreements, including without limitation, if a Participant has failed to timely pay its share of such amount in accordance with Section 4.9, 9.2 and/or 11.2. To fund the starting balance of the Buyer Working Capital Reserve Account, each Participant shall pay to SPPA its Participant Percentage of the starting balance of the Buyer Working Capital Reserve Amount by a date established by SPPA (no later than 45 days prior to the expected Commercial Operation Date). Except to the extent that Participants have been required to step-up their participation pursuant to Article Sixteen or to cover a default by another Participant under Article Twelve, SPPA may only use a Participant's contribution to the Buyer Working Capital Reserve Account to pay that Participant's Participant Percentage of a Seller invoice. For the avoidance of doubt, SPPA may not use one Participant's contribution to the Buyer Working Capital Reserve Account to pay another Participant's Participant Percentage of a Seller Invoice unless there has been a re-allocation pursuant to Article Twelve or Article Sixteen. When the each and every of the Apache II Agreements terminate and all obligations have been satisfied, all Non-Defaulting Participants shall receive their Participant Percentage of the Buyer Working Capital Reserve Account. When a Participant terminates its participation by transferring its Entitlement to others, its share of the Buyer Working Capital Reserve Account will be returned to it, once all its obligations have been satisfied and the transferee(s) have funded their share of the Buyer Working Capital Reserve Amount obligations. A Defaulting Participant will receive the amount of its share of the Buyer Working Capital Account that remains, if any, after its obligations under this Agreement are satisfied including any costs provided by SPPA due to Participant's default. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Participants acknowledge and expressly consent that the Buyer Working Capital Reserve Account will be subject to an Account Control Agreement in favor of Seller in the event of a default by SPPA pursuant to the Class B PPA.

4.8 Reserved

4.9 Payment Obligation. Starting prior to the Commercial Operation Date, SPPA shall invoice each Participant and Participant shall pay its properly allocable share of all of SPPA's forecasted costs related to the Apache II Agreements and forecasted SPPA A&G and any additional transmission costs. SPPA's invoicing procedures will be as follows:

(a) On or before the 25th of the month that is prior to each Service Month, SPPA will issue an invoice to each Participant of the estimated costs SPPA expects to incur for each such Service Month, including but not limited to costs pursuant to the Apache II Agreements, Transmission Costs, and SPPA A&G. Participant acknowledges that initial invoices from SPPA for a Service Month shall be premised on forecasts of the energy production during the Service Month and forecasts of SPPA expenses. Participant agrees that such invoices shall reflect estimates of all SPPA costs associated with Apache II Agreements for the applicable Service Month and Participant will pay such invoices notwithstanding the use of forecasts and estimates.

(b) On or before the 10th day of each Service Month (or the next Business Day if the 10th day of the Service Month is not a Business Day), the Participant shall pay SPPA in accordance with SPPA's payment instructions no less than the amount SPPA invoiced the Participant in accordance with Section 4.9(a). In addition to any other action SPPA may take with respect to a late payment, SPPA shall assess interest on all amounts not received by SPPA before the payment due date established by this Section 4.9(b). Interest shall accrue at the Contract Interest Rate over the actual number of days elapsed from the payment due date to the date such amounts are paid.

(c) Participant's administrative charge each month shall be (i) an amount established by SPPA from time to time based on SPPA's budget, plus (ii) where applicable, Participant's portion of SPPA's costs incurred in the prior month that are related to Apache II but were not included in SPPA's budget. If SPPA acquires additional transmission rights for the benefit of one or more (but less than all) Participants, the cost of those additional rights shall be paid by those Participants according to their proportionate usage of such transmission.

(d) Upon receipt of final invoices for all costs associated with the Service Month, SPPA shall compare Participant's pro rata share of all such costs with the estimated amount SPPA invoiced Participant pursuant to Section 4.9(a). Any overpayments by Participant shall be credited on the next invoice provided to Participant, and any underpayments shall be added to the next invoice provided to Participant. To the extent SPPA receives credits or payments from the Seller pursuant to the terms of the Apache II Agreements, SPPA shall maintain books and records to reflect that such credits or payments will be allocated pro rata for the benefit of the Participants. SPPA shall, in its reasonable discretion, apply such credits or payments to offset the Participants' requirement to purchase replacement Product if Product is not available or to offset the Participants' cost responsibilities under the Apache II Agreements.

ARTICLE FIVE: DISPUTES REGARDING BILLING AND PAYMENTS

5.1 Disputes. If Participant disputes any bill issued hereunder or the existence or extent of any obligation to make any payment hereunder, it shall nevertheless make payment of all bills when due in full with a written protest, submitted at the time of or subsequent to such payment, directed to SPPA. Any such protest shall be subject to the limitations set forth in Section 5.2. When any dispute regarding payment is resolved, any refunds due shall be paid (or credited) within ten (10) days thereafter, based upon the actual number of days elapsed from the date paid until the date refunded or offset.

5.2 Restriction on Challenges. If a Participant questions or disputes the correctness of any invoice submitted to it by SPPA, the Participant shall make any net payment to SPPA as reflected on the invoice when due. The Participant may request an explanation of any amounts due to or from SPPA as soon as practicable, but in no event later than twenty-two (22) months of the receipt of such billing statement (or, if earlier, two months prior to any deadline for billing challenges under any Apache II Agreement that is involved in the disputed invoice). SPPA shall review the relevant invoice. If the bill is determined to be incorrect, SPPA shall issue corrected invoices and make all payment adjustments with affected Participants as necessary to correct the error. No interest shall apply to such adjusted amounts. If SPPA and the Participant fail to agree on the correctness of a bill within thirty (30) days after the explanation has been requested, such dispute shall be resolved pursuant to Article Ten herein.

5.3 Pass-Through of Refunds.

(a) If, pursuant to any of the Apache II Agreements, SPPA receives any refund (as opposed to credits against its monthly bills, which will simply reduce SPPA's costs to be passed through to Participant hereunder) of any costs, it shall promptly credit Participant on Participant's next monthly bill an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from Participant the charges to which the refund relates; provided that if a Participant is in breach or default of its obligations under this Agreement, SPPA may deposit such refund amounts in the Buyer Working Capital Reserve Account for use as permitted hereunder until such time as Participant cures such breach or default.

(b) If SPPA receives any refund (as opposed to credits that simply reduce SPPA's costs to be passed through to the Participant hereunder) of any market charges or transmission charges, it shall promptly credit Participant on Participant's next monthly bill an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from Participant the charges to which the refund relates; provided that if a Participant is in breach or default of its obligations under this Agreement, SPPA may deposit such refund amounts in the Buyer Working Capital Reserve Account for use as permitted hereunder until such time as Participant cures such breach or default.

5.4 Unconditional Nature of Payment Obligation. All amounts payable by Participant under this Agreement shall be due irrespective of the actual availability of Product, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of SPPA or any other person under this Agreement or any other agreement for any cause whatsoever.

ARTICLE SIX: RESERVED

ARTICLE SEVEN: INFORMATION REGARDING PROJECT

7.1 SPPA Budgets. SPPA's annual budget will include allocations to the Power Purchase Agreement Project which is the subject of SPPA Project Contract No. 2021-2. Participants shall have the right to review and have input on the SPPA budget via the SPPA Board of Directors.

ARTICLE EIGHT: LIABILITY AND INDEMNIFICATION

8.1 Except as provided below in Article Twelve, the Participants shall, severally and not jointly, indemnify and hold SPPA and SPPA's directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all liability (including third-party claims, losses, damages, attorneys' fees, and litigation costs) that SPPA may sustain or suffer as a result of performance by SPPA or SPPA's agent of SPPA's obligations under this Agreement. Such indemnity shall not apply (i) to the extent such liability is covered by insurance, and/or (ii) if and to the extent that such liability was caused directly or indirectly by the fraud, gross negligence, willful misconduct, or breach of obligation under this Agreement of SPPA or SPPA's agent; provided, however, that, notwithstanding such exclusion, such indemnity shall apply if and to the extent that the conduct of SPPA or SPPA's agent that would otherwise give rise to such exclusion was undertaken specifically at the express direction of the SPPA Pool Management Committee and was reasonably necessary in order to carry out such direction.

8.2 If a customer of a Participant makes a claim or brings an action against one or more of the other Participants for any death, injury, loss, or damage arising out of or in connection with this Agreement, the Participant whose customer is making the claim shall indemnify and hold harmless SPPA and the other Participants and their directors, officers, attorneys, employees, subcontractors, agents and assigns from and against any liability for such death, injury, loss, or damage, unless such claim or action arises from the gross negligence or willful misconduct of SPPA, SPPA's agent, or the other Participant(s).

ARTICLE NINE: ASSIGNMENT

9.1 Assignment. This Apache II Resale Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Parties; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any Participant except with the consent, in writing, (a) of SPPA and the other Participants, which consent shall not be unreasonably withheld, and (b) if and as necessary, of Seller. SPPA shall not assign this Agreement. Any Person taking assignment of this

Agreement from a Participant shall agree in writing to be bound by the provisions of this Agreement and as a condition to such assignment shall fund its portion of the Buyer Working Capital Reserve Account on or before the date of such assignment.

9.2 Voluntary Transfer of Participant Entitlement to Other Participant(s). For any reason, the Participant shall have the option of seeking to terminate its Participant Entitlement by transferring its Participant Entitlement to one or more other Participants. No provision in this Section 9.2 shall operate or be interpreted so as to relieve a Participant of any obligation to make a payment already due, relieve the Participant of any suspension by SPPA pursuant to Section 11.2, prevent or otherwise delay the Participant's termination pursuant to Section 11.2(d), or prevent or otherwise delay the permanent reallocation of Participant's Participant Entitlement pursuant to Article 12. In the event a Participant can and elects such termination under this Section 9.2, SPPA shall undertake or cause to be undertaken the following actions in the order indicated:

(a) SPPA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the Participant Entitlement of the Participant seeking to terminate. Any part of the Participant Entitlement of the Participant seeking to terminate that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer. Such reoffering shall be repeated until the Participant Entitlement of the Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's Participant Entitlement.

(i) If the Participant Entitlement of the Participant seeking to terminate has been fully reallocated to one or more non-defaulting Participants, that Participant shall be permitted to terminate its Participant Entitlement.

(ii) If the Participant Entitlement of the Participant seeking to terminate has not been fully reallocated to one or more non-defaulting Participants, that Participant may request that SPPA market the unallocated portion to eligible non-participants. Such buyers must agree to become Participants by executing the form of Participation Agreement attached as Exhibit A. The new Participants must meet any eligibility requirements to become Participants if they are not already. In no event shall any transfer be permitted if it would jeopardize the tax-exempt status of any bonds issued by SPPA.

(iii) If SPPA does not succeed in remarketing the unallocated portion, that Participant shall not have the option of terminating its Participant Entitlement.

(b) In the event of a termination of any Participant and reallocation of its Participant Entitlement pursuant to this Section 9.2, SPPA shall prepare a revised Schedule 4.1 reflecting the revised Participant Entitlements and Participant Percentages of all Participants.

9.3 Timing of Transfer of Funds. Notwithstanding anything to the contrary herein, no assigning Participant (a) shall be relieved of its obligations hereunder, (b) shall be entitled to receive any remaining amount of its share of Working Capital Reserve Amount, or (c) shall be entitled to a return of any of its posted security, in each such case, until the assignee(s) of such assigning Participant has fully funded its share of the Working Capital Reserve Amount and provided any posted security that is required of any assignee Participants.

ARTICLE TEN: DISPUTE RESOLUTION

10.1 Any controversy between or among two or more of the Parties hereto, arising out of or relating to this Agreement, or any breach hereof or default hereunder, may be submitted to binding arbitration upon agreement of the Parties in the dispute, or otherwise may be resolved in any court of competent jurisdiction. (subject to Section 10.4 if any Tribal Participants are parties to the dispute). Provided, however, that no Party shall seek to arbitrate or litigate a controversy between or among the Parties without the Party's most senior executive first attempting in good faith to resolve the dispute with the most senior executive(s) of the other Party(ies) involved in the dispute. Such executives shall decide, within ten (10) Business Days of a written notice of the dispute, the maximum period during which they will attempt to resolve the dispute before any Parties may initiate arbitration or litigation. If such executives fail for any reason to agree upon a maximum period during which they will attempt to resolve the controversy, then the maximum period shall end forty-five (45) days after the written notice of dispute.

10.2 EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN OR AMONG TWO OR MORE OF THE PARTIES TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.3 The prevailing Party(ies) shall be entitled to recover from the opposing Party(ies) involved in any litigation hereunder the prevailing Party's reasonable attorneys' fees and costs (including reasonable expert witness fees) incurred in connection with such litigation.

10.4 The Participants acknowledge that certain of the Participants are Tribal Participants. The following provisions will apply if one of the Parties to a dispute is a Tribal Participant.

(a) Each Tribal Participant irrevocably waives its sovereign immunity for the limited purposes of any action or arbitration (i) arising out of or pertaining to this Agreement, (ii) enforcing any agreement to arbitrate a dispute pursuant to Article Ten, and (iii) enforcing any arbitration award rendered in an arbitration. Each limited waiver provided herein shall be authorized pursuant to a resolution (copies of which shall be included in Exhibit B hereto) from either (y) the governing body of the Tribal Participant if duly authorized to waive its sovereign immunity without the approval or consent from its associated Indian Tribe, Nation or Community or (z) the governing body of the Indian Tribe, Nation or Community that is associated with the Tribal Participant if the Tribal Participant is not independently authorized to waive its sovereign immunity. Each Tribal Participant further agrees that it will not raise failure to exhaust federal administrative or tribal administrative or judicial remedies as a defense to any such action. The waivers provided herein are limited to actions filed in the United States District Court for the District of Arizona, and appropriate appellate review, if and to the extent that jurisdiction is otherwise proper in those courts. If jurisdiction is not proper in the above-listed courts, then such waivers shall extend to actions filed in the courts of the State of Arizona and appropriate appellate review of such courts. If such federal and state courts are finally determined not to have jurisdiction over such action, then the waivers shall extend to actions filed in any court of competent jurisdiction. With respect to actions filed as specified above in a court of the State of Arizona, venue shall be exclusively in the Maricopa County, Arizona, Superior Court. The limited waivers provided herein apply only to Tribal Participants and shall not, under any circumstances, be interpreted, construed or extended to include any sovereign immunity rights independently or separately held by an Indian Tribe, Nation or Community that is associated with a Tribal Participant.

(b) The limited waivers set forth in this Section 10.4 shall apply to the enforcement of any agreement to arbitrate under this Agreement, including a pre-arbitration injunction, pre-arbitration attachment, other order in aid of arbitration proceedings, or the enforcement of any award in arbitration, or orders or judgments in litigation. However, the remedies rendered in any such arbitration or litigation shall be limited to specific performance of this Agreement or money damages. The court or arbitrator shall have the authority to order execution against (a) any assets or revenues of the Tribal Participant, including without limitation all revenues of such Tribal Participant, excluding all realty owned by the Tribal Participant upon which any assets of such Tribal Participant are located, and (b) proceeds of any applicable insurance policies maintained by the Tribal Participant. In no instance shall any enforcement be allowed against any assets of an Indian Tribe, Nation or Community that is associated with a Tribal Participant, other than the limited assets of the Tribal Participant set forth in this Section.

10.5 In no event shall any Party be liable to any other Party for indirect, special, consequential or exemplary damages arising out of or in any way related to this Agreement.

10.6 Agency Jurisdiction. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that a dispute over which a Governmental Authority has exclusive jurisdiction shall, in the first instance, be brought before and resolved by such Governmental Authority.

ARTICLE ELEVEN: DEFAULT AND REMEDIES

11.1 Events of Default. The following shall be Events of Default under this Agreement:

(a) The failure of Participant to make a payment when due under this Agreement, including to timely pay any invoice or post any required security under this Agreement (in each such case, a "Payment Default"); or

(b) The failure of Participant to take any action required under this Agreement or as reasonably requested by SPPA under this Agreement or in furtherance of SPPA's obligations under the Apache II Agreements; or

(c) Assignment of this Agreement by Participant, other than as permitted pursuant to Article Nine or any other action or omission by Participant that would cause SPPA to be in breach of any provision of the Apache II Agreements; or

(d) The failure of a Party to perform or abide by any other material obligation under this Agreement within 60 days of receipt of written notice of non-performance; provided, however, that if such default cannot be cured within such 60-day period, no Event of Default shall occur for so long as the non-performing Party is diligently pursuing a cure, and such non-performance is curable; or

(e) The commencement, with respect to a Party, by such Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for its winding-up or liquidation.

11.2 Remedies for Payment Default. In addition to any other available remedy for default, in the event of a Participant Payment Default, the following provisions shall apply:

(a) If a Participant does not timely pay an invoice in accordance with Section 4.9(b), a Payment Default by such Participant shall be deemed to have occurred as of the day after such invoice was due and payable and SPPA shall promptly send notice to the defaulting Participant of such Payment Default.

(b) Following SPPA's declaration of a Payment Default, SPPA may use that Participant's share of Buyer Working Capital Reserve Account to pay when due the Participant's share of any invoice SPPA has received for the Product. To the extent that SPPA uses funds in the Buyer Working Capital Reserve Account to pay a Participant's share of an invoice rendered to SPPA pursuant to the Apache II Agreements and such use of funds reduces that Participant's contribution to the Buyer Working Capital Reserve Account to less than the Participant's Participant Percentage, SPPA shall deliver a notice to such Participant on the Business Day after such funds are used and the Participant shall, within 10 days of such notice from SPPA, restore its contribution to the Buyer Working Capital Reserve Account to its Participant Percentage. Such notice shall describe actions SPPA has taken with respect to the Participant's share of the Buyer Working Capital Reserve Account.

(c) SPPA is required under Article 2.1.2 of the Class B PPA and Class B PPA to implement a step-up obligation in the event a Participant is in default. In accordance with that requirement, if a Participant does not pay an invoice prior to the 25th of the Service Month, SPPA may suspend the Participant's rights to its Participant Entitlement to Product. Following suspension of the Participant's rights, SPPA shall remarket the suspended Participant's allocated share, on an interim basis, to any other SPPA Participant that voluntarily assumes that share or any other eligible counterparty. If SPPA is unable to or otherwise does not remarket the share on a voluntary basis within thirty (30) days from the date of the defaulting Participant's suspension, SPPA shall reallocate the remaining portion of the suspended Participant's share pro rata (based upon the Participant Entitlements of Participants not in default), to all other Participants which are not in default. Notwithstanding the suspension, the Participant in Payment Default will have the full financial obligation to pay for its Participant Entitlement except to the extent SPPA has remarketed the Entitlement, up to the amount SPPA has been paid for such remarketed Entitlement less SPPA's cost. During the term of such suspension, SPPA may withdraw funds from Participant's share of the Buyer Working Capital Reserve Account in order to pay any portion of Participant's allocated share of all costs associated with the Apache II Agreements in excess of the amount received for any re-marketed or re-allocated Product. Such suspension shall continue until the earlier of the date that (i) Participant shall have cured such Payment Default, or (ii) the Participant shall have voluntarily transferred its Participant Entitlement to non-defaulting Participant(s) or to a new Participant pursuant to Section 9.2 and such new Participant(s) have paid the pro rata share of the Buyer Working Capital Reserve Amount.

(d) If a Participant has not cured the Payment Default after 60 days of notice of the Payment Default, SPPA shall terminate the Participant, remarket the Participant's share on an interim basis, and reallocate the Participant's share on a permanent basis pursuant to Article Twelve of this Agreement.

Notwithstanding the termination, the Participant will have the full financial obligation to pay for its Participant Entitlement except to the extent SPPA has remarketed the allocation and been paid for such remarketed Entitlement, irrespective of the fact that the share has been remarketed on an interim or permanent basis. SPPA may withdraw funds from Participant's share of the Buyer Working Capital Reserve Account in order to pay Participant's allocated share of all costs associated with the Apache II Agreements. SPPA shall promptly provide notice of any such termination to all Participants.

11.3 <u>Remedies for other Defaults.</u> If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity and any other applicable provision of this Agreement, except as otherwise limited by this Agreement. The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

11.4 <u>No Termination by Participant</u>. In response to any Event of Default by SPPA, Participant shall not have the right to terminate this Agreement unless such termination is undertaken pursuant to Article Nine of this Agreement, including following the procedures in Section 9.2.

ARTICLE TWELVE: TRANSFER OF PARTICIPANT ENTITLEMENT FOLLOWING TERMINATION FOR DEFAULT

12.1 In the event of a default by any Participant and termination of such Participant's Participant Entitlement pursuant to Section 11.2(d) of this Agreement, SPPA shall undertake or cause to be undertaken the following actions in the order indicated:

(a) SPPA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the Participant Entitlement of the defaulting Participant.

(b) Any part of the Participant Entitlement of the defaulting Participant that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer.

(c) Such reoffering shall be repeated until the Participant Entitlement of the defaulting Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's Participant Entitlement.

12.2 If the full amount of the defaulting Participant's Entitlement is not voluntarily accepted by other Participants, SPPA will attempt to market the remainder to entities that are not Participants, under the following conditions:

(a) Such entities must meet all eligibility requirements to become Participants; and

(b) Such entities must become Participants by executing the form of Participation Agreement attached as Exhibit A; and

(c) In no event shall any transfer be permitted if it would jeopardize the tax-exempt status of any bonds issued by SPPA.

12.3 SPPA shall transfer pro rata (based upon then-current Participant Entitlement), to all other Participants which are not in default, the remaining part of a defaulting Participant's Participant Entitlement if less than all of such Participant Entitlement has not been voluntarily accepted, pursuant to Section 12.1 above, by the non-defaulting Participants, or marketed to new Participants pursuant to Section 12.2 above, in all cases, within one hundred twenty (120) days after the date the Payment Default occurred. Upon the transfer of the full amount of the defaulting Participant's Participant Entitlement to other Participants (and such Participants' acceptance of such transfer), SPPA shall be relieved of any further obligation to attempt to dispose of such defaulting Participant's Participant Entitlement for the remaining months of SPPA's continued receipt of the Product.

12.4 Any part of the Participant Entitlement of a defaulting Participant voluntarily or involuntarily transferred pursuant to this Article Twelve to a non-defaulting Participant shall become a part of, and shall be added to, the Participant Entitlement of each transferee Participant, and the transferee Participant shall be obligated to pay for its Participant Entitlement increased as aforesaid, (including contribution to the Buyer Working Capital Reserve Account and the posting of any security that is required of any transferee Participants, in each case, on or before the date that is concurrent with the transfer; provided that in the case of posting security, such date may be extended to such date that is required in order for SPPA to meet its obligations to post security pursuant to Section 9.2 of the Class B PPA), as if the Participant Entitlement of the transferee Participant, increased as aforesaid, had been stated originally as the Participant Entitlement of the transferee Participant in the SPPA Power Purchase Project Agreement and Schedule 4.1.

12.5 A defaulting Participant shall remain liable for all payments required to be made by it under its SPPA Power Purchase Project Agreement, except that the obligation of the defaulting Participant to pay SPPA shall be reduced to the extent that payments shall be received by SPPA for that part of the defaulting Participant's Participant Entitlement which is transferred to any existing or new Participant under Article 12 of this Agreement.

12.6 As provided in Article 4 of this Agreement, SPPA may use a defaulting Participant's share of the Working Capital Reserve Amount to cover the obligations of SPPA on behalf of the Defaulting Participant under the Apache II Agreements. If any portion of defaulting Participant's share of the Working Capital Reserve Amount remains after satisfaction of such obligations, SPPA may withdraw such portion from the Working Capital Reserve Account only after all Participants with new or stepped-up obligations under this Article 12 have fully funded their new shares of the Working Capital Reserve Amount. SPPA may deduct from defaulting Participant's remaining portion of Working Capital any expenses incurred by SPPA on behalf of the Project Participants to manage the default by the defaulting Participant. If any amount of defaulting Participant's portion of Working Capital remains after all such expenses are satisfied, it shall be returned to defaulting Participant.

12.7 If a defaulting Participant's share of the Working Capital Reserve Amount is insufficient to cover the amounts SPPA owes on its behalf pursuant to the Apache II Agreements, SPPA will allocate the costs among the Participants in Schedule 4.1 in proportion to their revised Participant Entitlements, such costs to be allocated concurrently with such voluntary or involuntary transfer.

ARTICLE THIRTEEN: UNCONTROLLABLE FORCE

13.1 To the extent a Force Majeure (as defined in any of Apache II Agreements) exists and relieves, delays or otherwise excuses any or all of either SPPA's or Seller's obligations under the Apache II Agreements, the corresponding obligation of each Participant hereunder shall be relieved, delayed or excused during the continuance of such Force Majeure; provided that such relief, delay or excuse shall be limited to the extent and only for such obligations that are relieved, delayed or otherwise excused.

13.2 Under no circumstances shall the provisions of Section 13.1 provide relief, allow delay or otherwise excuse the obligations of a Participant to make payments required by this Agreement or to increase its Participant Entitlement as required by Sections 12.2 and 12.3 of this Agreement.

ARTICLE FOURTEEN: REPRESENTATIONS AND WARRANTIES

14.1 <u>SPPA's Representations</u>. SPPA hereby makes the following representations, warranties and covenants to Participant as of the Effective Date and through the end of the Term:

(a) SPPA is a political subdivision of the State of Arizona duly organized, validly existing and in good standing under the laws of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by SPPA of this Agreement have been duly authorized by all necessary action.

(c) This Agreement constitutes the legal, valid and binding obligation of SPPA, enforceable in accordance with its terms.

(d) There is no pending, or to the knowledge of SPPA, threatened action or proceeding affecting SPPA before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, SPPA's sole continuing covenant with respect to this Section 14.1(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.

14.2 Participant's Representations. Participant hereby makes the following representations, warranties and covenants to SPPA as of the Effective Date and through the end of the Term:

(a) Participant is a city, town, county, special taxing district established pursuant to Title 48, Chapters 11, 12, 17, 18, 19 or 22 of Arizona Revised Statutes, or any Indian tribe authorized to form a separate legal entity pursuant to A.R.S. §§ 11-952 and 11-952.02, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Participant of this Agreement have been duly authorized by all necessary action.

(c) This Agreement constitutes the legal, valid and binding obligation of Participant, enforceable in accordance with its terms.

(d) There is no pending, or to the knowledge of Participant, threatened action or proceeding affecting Participant before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, Participant's sole continuing covenant with respect to this Section 14.2(e) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.

(e) Participant is, and shall remain throughout the term of this Agreement, a Pool Participant under the Pool Agreement.

(f) Participant will establish, maintain and collect such rates, fees and charges so as to provide revenues at least sufficient to enable Participant to make all payments required to be made by it under this Agreement and any other agreements with respect to its electric utility.

(g) The obligations of Participant to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves. All payments made by Participant pursuant to this Agreement shall constitute operation and maintenance expenses of its electric utility system. The Participant shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement. The Participant shall not issue any evidence of indebtedness with a lien on electric system revenues that is prior to the payment of operating and maintenance expenses.

(h) The Participant covenants to maintain its electric system in good repair in accordance with Prudent Electrical Practices, to cooperate with SPPA, and to keep accurate records and accounts.

(i) The Participant shall not sell, lease or otherwise dispose of all or substantially all of its electric system, nor shall the Participant assign all or any part of its Participant Entitlement or any or all of its interests under this Agreement, except upon the approval of SPPA, such approval not to be unreasonably withheld or delayed.

(j) Participant's electric utility system shall not be made a part of an integrated utility system subsequent to the Effective Date of this Agreement if, in the opinion of a consulting engineer of national reputation selected by SPPA, the revenues of any other utility system(s) to be so integrated would not reasonably be expected to equal or exceed the costs and expenses thereof.

ARTICLE FIFTEEN: CREDITWORTHINESS

15.1 The SPPA Pool Management Committee and PPA Management Committee may establish requirements for the posting of security that may be required of individual Participants or for all Participants as credit concerns or Project needs may require, up to four months of estimated charges as calculated in the Apache II Agreements, inclusive of the working capital SPPA must fund to AEPCO pursuant to the Apache II Agreements.

15.2 Participant shall provide such financial information and operating data as SPPA is required to obtain from Participant under the Apache II Agreements or any rules or regulations applicable to SPPA related to Apache II project.

ARTICLE SIXTEEN: SPECIAL MEMBER PROVISIONS

16.1 RUS Approval. The effectiveness of this Agreement as to those Participants that are regulated by RUS (set forth on Exhibit D) (each, an "RUS Participant") is conditioned on approval by RUS of this Agreement as it applies to each such RUS Participant. No later than thirty (30) days after the Effective Date, each RUS Participant shall make an appropriate submission to RUS seeking the approval of this Agreement with respect to such RUS Participant. Each RUS Participant shall use reasonable best efforts to secure RUS approval. SPPA and each RUS Participant shall (at its own expense) cooperate with and assist one another in securing the necessary approval from RUS; provided that to the extent any information to be provided by a RUS Participant to RUS is deemed confidential information by Seller, Seller's obligation to provide such information may be conditioned upon RUS agreeing to maintain its confidentiality pursuant to a protective order or a confidentiality agreement.

16.2 RUS Denial or Modification; Reallocation. In the event RUS should deny approval of this Agreement with respect to a RUS Participant or require as a condition of approval of the Agreement any modifications that cannot be accommodated by an amendment agreeable to all Participants that is executed on or before the date that is 30 days after the RUS provides such modifications, then the RUS Participant's Participant Entitlement shall be reduced by the amount subscribed by the terminated RUS Participant at the time of such termination, and the Participant Entitlements of the remaining Participants shall be adjusted upwards pro rata to account for the terminating RUS Participant's prior Participant Entitlement (unless Participants agree on a different allocation) in a revised Schedule 4.1; provided that the entire amount purchased under any and all Apache II Agreements is allocated and such allocation shall occur no later than the date that is the earlier to occur of (a) the date that is 30 days after such termination, and (b) the date that is 30 days prior to the expected Commercial Operation Date.

16.3 Cancellation Rights Under A.R.S. § 38-511. The Parties hereby acknowledge that the Participants listed on Exhibit E are political subdivisions that, pursuant to A.R.S. § 38-511, "may, within three years after its execution, cancel any contract, without penalty or further obligation, . . . if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of [that political subdivision] is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract." The cancellation "shall be effective when written notice from … the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time."

16.4 Reallocation Upon Cancellation. Each of the Participants listed on Exhibit E agrees that if it elects to exercise its cancellation right pursuant to A.R.S. § 38-511 (based upon facts that were not known to it at the time of execution of this Agreement, or based upon facts known prior to execution if, contrary to the parties' intentions, such facts would constitute a valid basis for exercising the cancellation right), it shall provide at least twelve (12) months' notice of such cancellation. If a Participant listed on Exhibit E exercises its cancellation rights as set forth in this Section 16.4, then the Participant Entitlement shall be reduced by the amount subscribed by the terminated Participant at the time of such termination, and the Participant Entitlements of the remaining Participants shall be adjusted upwards pro rata to account for the terminating Participant's prior Participant Entitlement (unless Participants agree to another allocation) in a revised Schedule 4.1, and such reallocation shall occur (a) on the effective date of termination, if the effective date of termination is after the date that is 30 days before the expected Commercial Operation Date, or (b) the earlier to occur of (i) the date that is 30 days after such termination, and (ii) the date that is 30 days prior to the expected Commercial Operation Date, if the effective date of termination is before the date that is 30 days before the expected Commercial Operation Date; provided that the entire amount purchased under the Apache II Agreements is allocated.

16.5 Reserved.

16.6 Consent and Waiver. It is further acknowledged that certain Participants have engaged legal counsel and/or technical consultants to represent them in connection with the development of this Agreement and activities related thereto, which legal counsel or technical consultants simultaneously represented one or more other Participants and/or SPPA in connection with the same activities, and such joint representation was consented to by the Participants and is a commonly used and efficient means of obtaining expert assistance with respect to matters of common interest to certain of the Participants. In addition, the Participants acknowledge and understand that the designated representatives and alternates of the Participants on the SPPA board of directors are also elected officials of the Participants, or employees of or consultants to the Participants ("Participant fiduciaries") with responsibilities to both SPPA and the respective Participant. It is agreed and understood by all of the Parties that neither such representation of SPPA and any Participant in connection with this Agreement nor the dual role of the Participant fiduciaries is intended to be and does not constitute a basis for invoking cancellation pursuant to A.R.S. § 38-511.

ARTICLE SEVENTEEN: MISCELLANEOUS

17.1 Applicable Law. The rights and obligations of the Parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Arizona, without regard to conflicts of law doctrines.

17.2 Notices. Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed to SPPA and to Participants at the addresses provided in Exhibit C, or to such other address as any Party may designate by written notice to the other Parties. SPPA will update Exhibit C to reflect changes, without the necessity of amending this Agreement.

17.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

17.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law; but if any provision of this Agreement shall be prohibited by or deemed invalid under any applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

17.5 Parties Bound. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

17.6 Third-Party Beneficiaries. None of the provisions of this Agreement are intended for the benefit of any Person other than the Parties, their respective successors and permitted assigns.

17.7 Entire Agreement. This Agreement states the rights of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, oral or written, with respect thereto.

17.8 Headings and Table of Contents. Article and Section headings and the table of contents used in this Agreement (including headings used in any schedules and/or exhibits attached hereto) are for convenience of reference only and shall not affect the construction of this Agreement.

17.9 Schedules and Exhibits. The schedules and exhibits hereto, together with all attachments referenced therein, are incorporated herein by reference and made a part hereof.

17.10 Amendments and Waivers.

(a) Except as expressly provided with respect to updates of Schedule 4.1, Exhibits A, B, C, D E, F, and G, this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties.

(b) No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of the Party thereafter to enforce each and every provision thereof.

17.11 Survival. Except for Articles Five (to the extent applicable to obligations arising prior to termination), Eight, Ten, and Eleven, which shall survive termination of this Agreement, and except as otherwise expressly provided in this Agreement, the representations, warranties and obligations of each Party contained in this Agreement shall not survive the termination of this Agreement.

17.12 Further Assurances. Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by the other Party, all as may be reasonably necessary to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered under seal by its duly authorized representative as of the date set forth below.

SOUTHWEST PUBLIC POWER AGENCY

Approved as to Form:

By:____________________________

Name:__________________________

Title:___________________________

Date:___________________________

By:____________________________

Name:__________________________

Title: General Manager

Dated:__________________________

PARTICIPANT OF [____________________]

Approved as to Form:

By:____________________________

Name:__________________________

Title:___________________________

Date:___________________________

By:____________________________

Name:__________________________

Title:___________________________

Dated:__________________________

SCHEDULE 4.1

SPPA Project Contract 2021-2

Apache II Resale Agreement Between SPPA And Participants

(“Apache II Resale Agreement”)

	Solar MW	Solar %	BESS MW	BESS %	Participant %
AGUILA	2.0	1.85%	2.0	1.61%	1.73%
AK CHIN(1)			4.5	3.63%	1.82%
BUCKEYE	2.3	2.13%	2.3	1.85%	1.99%
SAFFORD	5.0	4.63%	6.6	5.32%	4.98%
WILLIAMS	3.6	3.33%	3.7	2.98%	3.16%
ED3	37.8	35.00%	38.3	30.89%	32.95%
ED4	15.7	14.54%	18.5	14.92%	14.73%
ED6	3.0	2.78%	3.0	2.42%	2.60%
ED8	13.4	12.41%	19.6	15.81%	14.11%
HARQUAHALA	5.0	4.63%			2.32%
MWD			3.0	2.42%	1.21%
MCMULLEN VALLEY	5.6	5.19%	5.5	4.44%	4.82%
OCOTILLO	1.0	0.93%	1.0	.81%	0.87%
ROOSEVELT	3.0	2.78%	3.0	2.42%	2.60%
TOHONO O’ODHAM(1)			3.0	2.42%	1.21%
TONOPAH	3.6	3.33%	3.0	2.42%	2.88%
THATCHER	5.0	4.63%	5.0	4.03%	4.33%
WICKENBURG	2.0	1.85%	2.0	1.61%	1.73%

(1) Tribal Participant

EXHIBIT A

FORM OF PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT FOR THE SOUTHWEST PUBLIC POWER AGENCY, INC., PROJECT AGREEMENT FOR THE POWER PURCHASE AGREEMENT PROJECT (the "Participation Agreement") is entered into as of the ___ day of ___________, 202__, ("Participant Effective Date") by and between __________________ (the "Participant") and the Southwest Public Power Agency, Inc. ("SPPA").

The Participant [is] [is not] a member of SPPA and is or will be a participant of the Pool Agreement and wishes to participate in the Power Purchase Agreement Project. Accordingly, by the execution and delivery of this Participation Agreement, the Participant acknowledges and agrees to become a "Participant" under the SPPA Project Contract No. 2021-2 (the "Project Agreement"), dated as of ____________, 202___, by and among SPPA and the other Participants and under the Apache II Resale Agreement ("Apache II Resale Agreement"), dated as of ____________, 202___, by and among SPPA and the "Participants" that are or have become party thereto. SPPA and, if in existence, the Project Management Committee have approved the participation of the Participant (and authorized SPPA's execution of this Participation Agreement) pursuant to Article 7 of the Project Agreement. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Apache II Resale Agreement and the Project Agreement.

The Participant hereby acknowledges, agrees and confirms that, by its execution of this Participation Agreement, as of the date hereof, it shall (without limitation): (i) be deemed to be a signatory to the Project Agreement and the Apache II Resale Agreement; (ii) be deemed to have made the representations and warranties set forth in Article 18 of the Project Agreement to SPPA and each other Participant a party thereto [and Article Fourteen of the Apache II Resale Agreement to SPPA and each other Participant a party thereto] on and as of the Participation Effective Date; (iii) agree that the representations made with respect to the Project Agreement and the Apache II Resale Agreement shall be deemed to include this Participation Agreement, (iv) agree to be bound by the terms of the Project Agreement; (v) agree that each other Participant (under the Project Agreement), each Participant (under the Apache II Resale Agreement) and Seller is a third-party beneficiary of this Participation Agreement and the Apache II Resale Agreement; and (vi) have all of the rights, remedies, powers, privileges and obligations of a Participant under the Project Agreement and of a Participant under the Apache II Resale Agreement from and after the date of this Participation Agreement.

The Participant hereby specifies that its address for notices under Exhibit F of the Project Agreement and Exhibit C of the Apache II Resale Agreement shall be as follows:

[Participant]
[Street]
[City, State, Zip Code]
Attention:

The following items are attached hereto:

1. An amended Exhibit A of the Project Agreement adding the Participant and an amended Schedule 4.1 of the Apache II Resale Agreement reflecting the adjusted Participant Entitlement and Participant Percentages, to be effective as of the Participant Effective Date.

2. If the Participant is a tribal entity: A copy of the Participant's waiver of sovereign immunity, which shall be deemed to be included in Exhibit B of the Apache II Resale Agreement and Appendix C-1 of the Project Agreement.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to sign this Participation Agreement on the date first set forth above.

[**PARTICIPANT**]

By______________________
Name:___________________
Title:____________________

Southwest Public Power Agency, Inc.

By______________________
Name:___________________
Title:____________________

EXHIBIT B

COPIES OF TRIBAL RESOLUTIONS AND WAIVERS (SECTION 10.4)

EXHIBIT C

Notices (Section 16.2)

ADDRESSES FOR NOTICES

TO SPPA:

Southwest Public Power Agency, Inc.
160 North Pasadena
Suite 101
Mesa, AZ 08201
Attn:, generalmanager@sppa.biz; Dennis L. Delaney, dld@krsaline.com & with a copy to Sheryl Sweeney, ssweeney@clarkhill.com

TO PARTICIPANTS:

Aguila Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	**Ak-Chin Energy Services** 42507 W Peters & Nall Rd Maricopa, AZ 85138 Attention: ACES Board Chairman *With a copy to:* Ed Gerak, Power Manager Utility Strategies Consulting Group 4645 S. Lakeshore Dr, Suite 16 Tempe, AZ 85282
Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326-0160 Attn: General Manager	**City of Safford** P.O. Box 272 Safford, AZ 85548 Attn: City Manager
City of Williams 113 South 1st Street Williams, AZ 86046 Attn: City Manager	**Electrical District Number Three of Pinal County** 41630 W. Louis Johnson Dr. Maricopa, AZ 85138 Attn: General Manager
Electrical District Number Four of Pinal County P. O. Box 605 Eloy, AZ 85131 Attn: District Manager	**Electrical District Number Six** 34630 N. Schnepf Rd. San Tan Valley, AZ 85140 Attn: Board President
Electrical District Number Eight of Maricopa County 38401 W I-8; Bldg 175	**Harquahala Valley Power District** P.O. Box 1267

Gila Bend, AZ 85337 Attn: General Manager	Mesa, AZ 85211-1267 Attn: District Manager
Maricopa Water District P.O. Box 900 Waddell, AZ 85355-0900 Attn: General Manager	**McMullen Valley Water Conservation & Drainage District** P.O. Box 70 Salome, AZ 85348 Attn: General Manager
Ocotillo Water Conservation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	**Roosevelt Irrigation District** 103 West Baseline Road Buckeye, AZ 85326 Attn: Superintendent
Tohono O'odham Utility Authority P.O. Box 816 Sells, AZ 85634 Attn: General Manager	**Tonopah Irrigation District** P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Administrator
Town of Thatcher P. O. Box 670 Thatcher, AZ 85552 Attn: Town Manager	**Town of Wickenburg** 155 N Tegner Street Suite A Wickenburg, AZ 85390 Attn: Town Manager

EXHIBIT D

RUS PARTICIPANTS

1. Tohono O'odham Utility Authority

EXHIBIT E

ARIZONA MUNICIPAL PARTICIPANTS

1. City of Safford
2. City of Williams
3. Town of Thatcher
4. Town of Wickenburg

EXHIBIT F

Apache II Storage Class B Energy Storage Agreement between AEPCO and SPPA

EXHIBIT G

Apache II Solar Class B Power Purchase Agreement between AEPCO and SPPA