



## Ageto Renewable Controller (ARC) Agreement

This Ageto Renewable Controller Agreement (“**Agreement**”) is between you (hereinafter referred to as the “**Customer**”) and Ageto, LLC, a Colorado limited liability company (“**Ageto**”). Customer and Ageto may be referred to hereinafter individually as “**Party**” and collectively as “**Parties**.”

This Agreement shall be binding upon the Parties on the first of:

1. The Customer making an initial payment to Ageto for the ARC Equipment in accordance with the applicable purchase order for such ARC Equipment; or
2. The Customer signing this Agreement and returning the executed version to Ageto.

Any differing or additional terms printed or otherwise contained in Customer’s acknowledgement, confirmation, payment, or acceptance of this Agreement and any alterations of this Agreement made by Customer shall have no force or effect. Customer agrees that such differing or additional terms or alterations shall not constitute any part of the contract between the Parties. Furthermore, unless otherwise agreed to in writing signed by an authorized representative of Ageto, any such differing or additional terms or alterations to this Agreement are deemed by Ageto to be “material” alterations and Ageto hereby objects to such alterations.

NOW, THEREFORE, in consideration for the recitals, mutual covenants and promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### SECTION 1. DEFINITIONS

**1.1. “ARC Equipment”** means the ARC Hardware and the Software.

**1.2. “ARC Hardware”** means the Ageto control cabinet that includes the following: (i) Industrial PC and touchscreen; (ii) power supply and UPS; (iii) Ethernet switch; (iv) remote communications; and (v) any other hardware provided by Ageto related to the use of the foregoing.

**1.3. “Confidential Information”** means all information that a Party (a “Disclosing Party”) discloses to another Party (a “Receiving Party”) that falls within one or more of the following categories: (i) any information identified as Confidential Information herein; (ii) any information that falls within the definition of a “trade secret” as defined under C.R.S. § 7-74-102(4), as amended; (iii) any information, including a formula, pattern, compilation, program, device, method technique, or process that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value

from its disclosure or use and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; (iv) any information which the Receiving Party knows or reasonably should know that the Disclosing Party is required to keep confidential under a binding obligation with a third party; and (v) all information provided to a Receiving Party which the Receiving Party knows or reasonably should know could be detrimental to the interests of the Disclosing Party if disclosed or used without authorization, whether or not such information is identified as confidential. Information that falls into any one or more of the following categories will not constitute Confidential Information: (1) information that is or becomes part of the public domain through no fault of the Receiving Party; (2) information that the Receiving Party can show was known by it prior to its receipt from the Disclosing Party; (3) information that the Receiving Party can show was independently developed by or for it without relying on any Confidential Information; (4) information that the Receiving Party can show was rightfully received from a third party who is not under any obligation to maintain the confidentiality of such information, under circumstances not involving a violation of the rights of the Disclosing Party.

**1.4. “Data”** means all data collected by the ARC Equipment, including, but not limited to, energy data, building load, utility usage, and PV production.

**1.5. “Intellectual Property”** means copyrights, trademarks, trademark applications (including intent-to-use applications), trade names, moral rights, trade secrets, patents, patent applications, inventions, invention disclosures, know-how, designs, and other items commonly recognized as intellectual property under the laws of the United States or any other country.

**1.6. “Plant”** means the facility or facilities owned and operated by the Customer where the ARC Equipment shall be installed.

**1.7. “Services”** means everything provided or performed by Ageto from time to time under this Agreement, including, but not limited to, maintenance of the ARC Equipment.

**1.8. “Software”** means the software on the ARC Hardware.

**1.9. “Standard Fees and Expense Policy”** means Ageto’s standard fees for certain Services and reimbursement policy, which may be updated from time to time, and a copy of which is attached hereto as Exhibit A.

**1.10. “Warranty Period”** means the 12-month period starting on the date Ageto completes Commissioning of the ARC Equipment (as defined below), provided, however, that the

Warranty Period automatically terminates upon termination of this Agreement.

## **SECTION 2. SCOPE**

**2.1. Scope.** This Agreement controls and governs: (i) the Consulting Services (hereinafter defined); (ii) the sale of the ARC Hardware; (iii) installation of the ARC Equipment; (iv) access to use of the Software solely in connection with the ARC Hardware; (v) and the Support Services provided by Ageto during the Warranty Period.

**2.2. Entire Agreement.** This Agreement together with the Exhibits, all written instructions issued hereunder by Ageto, contains the complete and final agreement between the Parties, and no agreement or other understanding in any way purporting to modify the terms and conditions hereof shall be binding upon Ageto unless agreed to by Ageto in writing on or subsequent to the date of this Agreement.

## **SECTION 3. CONSULTING SERVICES**

**3.1. Consulting Services.** Within a reasonable amount of time after the execution of this Agreement, Ageto and Customer shall schedule a time to discuss sizing analysis, asset selection, specifications, and Customer Requested Specifications for the ARC Equipment (“Consulting Services”). Fees charged for Consulting Services will be set forth in a separate schedule provided to Customer upon request. All fees paid for the Consulting Services are non-refundable.

## **SECTION 4. HARDWARE SALE AND COMMISSIONING**

**4.1. Assembly of ARC Equipment.** If Customer requests to cancel its order for the ARC Equipment, or this Agreement is otherwise terminated due to a breach by Customer, then Customer shall pay to Ageto all direct charges incurred by Ageto with respect to the assembly of the ARC Equipment, including, but not limited to, cost of production, cost of materials, cost of the components, restocking charges, and transportation charges.

### **4.2. Customer Requested Specifications.**

**4.2.1** During the Consulting Services, Customer may request any of the following to be incorporated into the ARC Equipment: (i) Intellectual Property, software, materials, algorithms, concepts, data, designs, developments, documentation, discoveries, HTML, XML and other codes, inventions, multimedia files (including audio, graphic, photographic, and video files), object codes, programs, source codes, texts, and any other item generally recognized as technology owned by Customer (“**Customer Provided Technology**”); or (ii) custom design requests that alter Ageto’s customary ARC Equipment provided, or designs requested by Customer outside of the recommended specifications provided by Ageto (collectively, “**Customer Requested Designs**,” and together with Customer Provided Technology “**Customer Requested Specifications**”).

**4.2.2** Ageto shall evaluate the Customer Requested Specifications, and to best of its ability incorporate 4876-2813-1360, v. 1

Customer Requested Specifications into the ARC Equipment, provided, however, that Ageto does not guarantee that it can incorporate all Customer Requested Specifications and shall notify Customer of Customer Requested Specifications that cannot be incorporated.

**4.2.3** Customer hereby grants Ageto a license to Customer Requested Specifications solely for the purpose of incorporating such Customer Requested Specifications into the ARC Equipment.

**4.3. Changes.** Customer may by written notice, request changes in the ARC Equipment, drawings, specifications, descriptions, shipping instructions, or delivery schedule. Acceptance of any such change must be in writing by the Ageto. If such acceptance results in an increase or decrease of the cost of, or time required for, performance of this Agreement, an equitable adjustment will be made by Ageto and invoiced to the Customer.

**4.4. Sale of ARC Hardware.** Ageto shall sell to Customer the ARC Hardware in accordance with the terms of this Agreement.

**4.5. Title and Risk of Loss.** Ageto shall deliver the ARC Hardware to Customer EXW Fort Collins, Colorado (Incoterms® 2020), provided, however, that title to the ARC Hardware (excluding the Software) provided under this Agreement will pass to Customer upon (i) acceptance by Customer in accordance with Section 6.1; and (ii) full payment by Customer for the ARC Equipment in accordance with the applicable invoice.

**4.6. Commissioning.** Within a reasonable amount of time after the ARC Equipment has been manufactured in accordance with this Agreement, Ageto shall, as appropriate, place into service, configure, and grant Customer access to the ARC Equipment (“**Commissioning**”). Customer may request changes to the time, date, and location of the Commissioning, provided, however, that if any such change results in an increase or decrease of the cost of, or time required for, performance of the Commissioning, an equitable adjustment will be made by Ageto and invoiced to the Customer

### **4.7. Customer Responsibilities.**

**4.7.1** Customer shall provide Ageto access to the Plant for the purpose of commissioning the ARC Equipment.

**4.7.2** Customer shall inspect the Plant prior to Ageto’s arrival to the Plant and notify Ageto of any conditions that could adversely affect or prevent Ageto’s ability to safely install the ARC Equipment, and any hazards that may not be readily apparent to Ageto (collectively “**Adverse Condition**”). To the extent an Adverse Condition results in a delay of Commissioning or additional expertise in engineering an appropriate solution, such time shall be billed at standard Ageto commissioning rates set forth the Standard Fees and Expense Policy.

**4.7.3** Prior to the Commissioning, Customer shall provide Ageto with notice of any safety requirements, or training necessary to access the Plant.

4.7.4 Customer shall, at its sole expense, provide a qualified electrician (“**Electrician**”) that has the requisite knowledge and specialized training to work safely on energized circuits to install the ARC Equipment on behalf of the Customer with due diligence, in a good, safe, and workmanlike manner and in accordance with the installing guidelines provided by Ageto to Customer.

4.7.5 Customer shall provide an English-speaking authorized agent of Customer to be present during the Commissioning.

4.7.6 Customer shall provide: (i) site wiring for the communication network between energy sources; (ii) system one-line diagrams of the electrical system to which the ARC Equipment will be connected; (iii) internet connection for remote monitoring; and (iv) any other equipment, documentation, hardware, or item as reasonably requested by Ageto to assist in the Commissioning and use of the ARC Equipment.

4.7.7 Customer shall complete, sign, and return the ‘ARC Commissioning Ready Checklist’ prior to scheduling the on-site commissioning trip. If Customer has not prepared the site for commissioning in accordance with the ARC Commissioning Ready Checklist when Ageto arrives on-site at the scheduled time, Customer shall be charged a ‘Utilization Fee’ (as set forth on Exhibit A) in addition to all other Standard Fees.

4.7.8 The Customer’s obligations under this Section 4.7 shall survive the termination of this Agreement and shall apply in every instance that Ageto has to access to the Plant.

#### **4.8. Ageto Responsibilities.**

4.8.1 Ageto shall furnish the ARC Equipment and all personnel required to perform and complete the Commissioning, except that any electrical work shall be completed by the Electrician.

4.8.2 Ageto shall perform the Commissioning with due diligence, in a good, safe, and workmanlike manner, using skilled, competent, and experienced personnel.

4.8.3 As part of the Commissioning, Ageto shall provide system commissioning, testing, hand-over training, and demonstration of the ARC Equipment.

4.8.4 Ageto shall provide Customer with documentation concerning the features and use of the ARC Equipment in a User Manual (the “**Documentation**”).

### **SECTION 5. SOFTWARE RIGHTS**

**5.1. Rights to Software.** Subject to Customer’s payment of all the fees due pursuant to this Agreement and Customer’s compliance with all use restrictions contained in this Agreement and any and all end-user license agreements (“**EULAs**”) relating to the Software, Ageto grants to the Customer a non-exclusive, revocable, non-transferable, limited right to access and use the Software solely in connection with the ARC Hardware

and in accordance with this Agreement and all limitations imposed by Ageto’s licensors.

**5.2. Limitations; Revocation of License.** Any rights not expressly granted by this Agreement are prohibited. Ageto may revoke Customer’s license to the Software if the Customers fails to comply with the terms and conditions set forth in this Agreement, and does not remedy such failure within thirty (30) days after receiving notice thereof. Ageto may also revoke the Customer’s license to the Software if there is any use or dissemination of the Software not expressly permitted herein. Ageto shall not be liable for any loss, cost, expense, or damage resulting from or occurring as a consequence of such revocation.

### **SECTION 6. ACCEPTANCE OF ARC EQUIPMENT**

**6.1. Acceptance Procedure.** The criteria to determine the acceptance of the ARC Equipment shall include the specifications and functionality described in the Documentation (the “**Acceptance Criteria**”). For fifteen (15) days following the Commissioning, the Customer may reject the ARC Equipment if the ARC Equipment does not materially conform to the Acceptance Criteria by providing written notice to Ageto of the specific reasons why the ARC Equipment does not materially conform to the Acceptance Criteria. If so rejected, Ageto shall remediate the issues identified in the rejection notice and notify the Customer when the ARC Equipment is ready for re-testing, at which point the fifteen (15) day acceptance procedure will be repeated. If the ARC Equipment is not accepted during the second or any subsequent acceptance procedure, the Customer’s sole and exclusive remedy is to request a refund of any fees paid for the ARC Equipment and return the ARC Equipment to Ageto via a method approved in writing by Ageto. If the Customer notifies Ageto in writing that it accepts the ARC Equipment or does not issue a notice of rejection within fifteen (15) days, then the Customer shall be deemed to have accepted the ARC Equipment.

**6.2. Non-Refundable.** Unless otherwise expressly stated herein, upon acceptance in accordance with Section 6.1, all payments made by Customer for the ARC Equipment are non-refundable.

### **SECTION 7. WARRANTY**

**7.1. Warranty.** Ageto warrants that during the Warranty Period the ARC Equipment shall be free from material defects and shall materially conform to applicable specifications, drawings, designs, and samples as set forth in the Documentation.

**7.2. Remedy.** If Customer discovers any material defect or deficiency in the ARC Equipment within the Warranty Period, and Customer has notified Ageto of the material defect or deficiency within a reasonable period of time after its discovery, Ageto shall promptly investigate the defect or deficiency. If Ageto determines that the cause of the defect or deficiency is **not** due to a limitation stated in Section 7.3, Ageto shall promptly repair, re-perform, or replace the defective or deficient portion of the ARC Equipment (and shall provide all labor, materials, equipment and other services necessarily incidental to effecting such correction of

the defect or deficiency). If such repair, re-performance, or replacement does not fix the materially defective or deficient portion of the ARC Equipment, then, upon Customer's request, Ageto shall refund any payments made by Customer for the ARC Equipment prorated based on time period ARC Equipment was in use. The foregoing remedies shall be Customer's sole and exclusive remedy for breach of warranty. Customer shall reimburse Ageto for its expenses incurred in accordance with the Standard Fees and Expense Policy for any remedy that requires an on-site visit to the Plant. Ageto will not charge additional fees for labor or time to remedy a defect or deficiency remotely.

**7.3. Limitations.** The warranty in this Section 7 does not cover or apply to any of the following, as determined in Ageto's sole discretion: (i) Customer Requested Specifications; (ii) defects caused by inadequate maintenance of the ARC Equipment by Customer; (iii) Customer's use of the ARC Equipment in a manner in which it was not intended to be used; (iv) modification, changes, or repairs made to the ARC Equipment by Customer without Ageto's written consent ("**Customer Modification**"); (v) defect caused by the negligence of the Customer; and (vi) minor defects caused by ordinary wear and tear. Ageto's repair, replacement, or re-performance for defects caused under this Section 7.3 shall be at Customer's sole cost and expense and billed in accordance with Ageto's then-current Standard Fees and Expense Policy.

**7.4. DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, AGETO MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO THE ARC EQUIPMENT FURNISHED BY AGETO UNDER THIS AGREEMENT. AGETO HEREBY DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO THE ARC EQUIPMENT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BECAUSE THE PERFORMANCE OF THE ARC EQUIPMENT SUPPLIED BY CONTRACTOR HEREUNDER MAY VARY WITH THE SPECIFIC CHARACTERISTICS OF CUSTOMER'S ENERGY SOLUTION SYSTEM, CONTRACTOR DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO THE EFFECTIVENESS OF, OR THE RESULTS TO BE OBTAINED BY USING, THE ARC EQUIPMENT SUPPLIED UNDER THIS AGREEMENT.

## **SECTION 8. SUPPORT SERVICES**

**8.1. SUPPORT SERVICES DISCLAIMER.** THE SUPPORT SERVICE PROVIDED IN THIS SECTION 8 (THE "**SUPPORT SERVICES**") SHALL BE AVAILABLE FOR THE WARRANTY PERIOD. FOLLOWING THE EXPIRATION OF THE WARRANTY PERIOD CUSTOMER MUST PURCHASE SUPPORT SERVICES AT AGETO'S THEN PREVAILING RATES IN ORDER TO BE AFFORDED THE SUPPORT SERVICES CONTAINED IN THIS SECTION 8.

**8.2. Software Updates.** Any updates made to the Software, if any are purchased, shall be provided under the terms and conditions set forth in this Agreement or any new terms applicable at the time of the update. IF CUSTOMER DOES NOT PURCHASE SUPPORT SERVICES, CUSTOMER ACKNOWLEDGES THAT IT WILL NOT RECEIVE UPDATES TO THE SOFTWARE, WHICH MAY MATERIALLY AFFECT THE PERFORMANCE OF THE ARC EQUIPMENT.

**8.3. Scheduled Maintenance.** Customer hereby acknowledges that all or any portion of the ARC Equipment may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, and the foregoing shall not constitute a breach of this Agreement. Ageto shall use reasonable efforts to provide notice to the Customer of any scheduled periods of unavailability.

**8.4. Error Reporting.** If the Customer experiences errors, interruptions, problems, defects, or issues (collectively, "**Errors**") with the ARC Equipment, the Customer may report the Error to Ageto using the support email address, support telephone number, or electronic support system provided by Ageto. The report should contain a description of the Error encountered and, where possible, a description of how to repeat the condition that gave rise to the Error, and other diagnostic information as available ("**Error Report**").

**8.5. Error Solution.** Upon receipt of an Error Report, Ageto shall use its best efforts to resolve the Error through (i) troubleshooting, (ii) providing updates to the ARC Equipment, or (iii) replacing parts of the ARC Equipment that may be causing the Error.

**8.6. Additional Fees.** If after investigation of the cause of the Error, Ageto determines in its reasonable discretion that the Error was caused due to (i) Customer Requested Specifications, (ii) Customer Modifications; (iii) inadequate maintenance of the ARC Equipment by Customer, (iv) Customer's use of the ARC Equipment in a manner in which it was not intended to be used, or (v) negligent act or omission of the Customer, then such Error resolution shall be billed in accordance with Ageto's then-current Standard Fees and Expense Policy.

**8.7. Feedback.** Customer grants Ageto the right to use any feedback or ideas provided by Customer concerning the ARC Equipment or any aspect of Ageto's products or services in any manner Ageto desires without compensation or any other obligation to Customer.

## **SECTION 9. COMPENSATION AND PAYMENT TERMS**

**9.1. Fees.** Customer agrees to pay Ageto the amounts set forth in each applicable invoice. Such consideration may be fixed amounts or hourly or daily labor charges as specified in the relevant invoice. Customer further agrees to reimburse Ageto for all reasonable out-of-pocket expenses incurred in connection with Ageto's performance of its obligations hereunder. Such reimbursement requests will be in accordance with Ageto's then-current Standard Fees and Expense Policy.

**9.2. Payments.** Unless otherwise explicitly stated on an invoice, Customer's payment will become due and payable in United States currency within thirty (30) days of the invoice date. Any balance unpaid after thirty (30) days will accrue interest at the lesser of one percent (1%) for each month or fraction thereof that the invoice is overdue or the maximum rate allowed by applicable law. In the event of a dispute regarding any amounts invoiced hereunder, while such a dispute is being resolved, Customer shall

not withhold payment of any undisputed amounts due and payable to Ageto. In the event that payments are not received within thirty (30) days of the date of invoice, Ageto may suspend performance of its obligations hereunder until it has received payment in full or immediately terminate this Agreement upon notice to Customer. Customer shall be liable and shall reimburse Ageto for all attorneys fees and costs in any collection matter under this Agreement.

**SECTION 10. INTELLECTUAL PROPERTY OWNERSHIP AND RESTRICTIONS**

**10.1. Ownership of Software.** The Software is licensed to the Customer and not sold (notwithstanding the use of the term “purchase”, if used). Except as otherwise expressly stated, all Intellectual Property rights associated with the Software are the exclusive property of Ageto or its licensors. All rights in and to the Software not expressly granted to the Customer in this Agreement or in any applicable EULA are reserved by Ageto or its licensors. No ownership rights to Software are being conveyed to the Customer by this Agreement.

**10.2. Ownership of Ageto’s Intellectual Property.** Other than Customer Requested Specifications, the selection, compilation, organization and format of the ARC Equipment constitutes copyrightable subject matter of Ageto. All Intellectual Property rights associated with the ARC Hardware, other than the Customer Requested Specifications, are the exclusive property of Ageto or its licensors. All rights in and to Ageto’s Intellectual Property not expressly granted to the Customer are reserved by Ageto. No ownership rights to Ageto’s Intellectual Property are being conveyed to the Customer hereunder.

**10.3. Restrictions on Use of ARC Equipment.** The Customer shall not (and shall not allow any third party to): (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any part of the ARC Equipment; (ii) distribute, modify, publicly perform, publicly display, provide, sell, sublicense, lease, lend, or otherwise use or allow person not a Party to this Agreement to access or use the ARC Equipment; (iii) list or otherwise display or copy any object code of any part of the ARC Equipment; (iv) develop any improvement, modification, or derivative work of any ARC Equipment or include a portion thereof in any other software, equipment or item; (v) upload, post, or otherwise transmit any material that contains software viruses or any other malicious computer code, files, or programs designed to interrupt, destroy, or limit the functionality of the ARC equipment to any third-party software or hardware or equipment or property; (vi) allow the transfer, transmission, export, or re-export of the ARC Equipment (or any portion thereof) or of Ageto’s technical data to any country outside the country of Commissioning; (vii) perform benchmark tests without the prior written consent of Ageto (any any results of such permitted benchmark testing shall be deemed Ageto’s Confidential Information); or (viii) use the ARC Equipment in any that infringes any third party’s rights including a third-party’s Intellectual Property rights or in a manner detrimental to ARC’s commercial interests.

**10.4. Development of New Functionality.** Ageto may monitor the Customer’s use of the ARC Equipment to develop new, 4876-2813-1360, v. 1

additional, or improved services or features. Such monitoring shall be solely at Ageto’s expense, shall not impact the use of the ARC Equipment. Any new, additional, or improved services or features, including all Intellectual Property rights therein, shall belong to Ageto.

**SECTION 11. DATA**

**11.1. Collection of Data.** Customer hereby consents to the remote monitoring and collection of Data by Ageto, for so long as the ARC Equipment is being used by the Customer.

**11.2. Ownership of Data.** Excepting only that portion of the Data that constitutes public domain information, the Data constitutes Confidential Information of Ageto.

**11.3. Permitted Use of Data.** Without limiting Section 11.2, Customer may, and subject to the other terms and conditions of this Agreement, incorporate or merge the Data with Customer’s internal projects or data solely for purposes of enabling Customer to view, analyze, compare, and use the Data with Customer’s data for Customer’s internal business purposes only.

**SECTION 12. REPRESENTATIONS AND WARRANTIES**

**12.1. Ageto’s Representations and Warranties.**

12.1.1 Ageto represents and warrants to Customer that: (i) this Agreement has been validly executed and delivered by Ageto and that this Agreement constitutes the legal, valid and binding obligation of Ageto enforceable against Ageto in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain those remedies may be pending; (ii) Ageto has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and (iii) that the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all requisite action on the part of Ageto.

12.1.2 Ageto represents and warrants that it has the authority to grant, license, or assign any rights to be granted, licensed or assigned (as applicable) by Ageto under this Agreement to Customer.

**12.2. Customer Representations and Warranties.**

12.2.1 Customer represents and warrants to Ageto that: (i) this Agreement has been validly executed and delivered by Customer and that this Agreement constitutes the legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain those remedies may be pending; (ii) Customer has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and that the execution, delivery and performance of this Agreement and the consummation of the

transactions contemplated by this Agreement have been duly authorized by all requisite action on the part of Customer; and (iii) Customer's execution and delivery of this Agreement and Customer's performance or compliance with the terms of this Agreement will not conflict with, result in a breach of, constitute a default under, or require the consent of any third party under any license, sublicense, lease, contract, agreement or instrument to which Customer is bound or to which Customer's Plant is subject.

12.2.2 Customer represents and warrants to Ageto that there are no pending or threatened lawsuits, actions or any other legal or administrative proceeding against Customer which, if adversely determined against Customer, would have a material adverse effect on Customer's ability to perform its obligations under this Agreement.

12.2.3 Customer represents and warrants that none of the Customer Requested Specifications infringe on any third party's rights.

12.2.4 Customer represents and warrants that it has the authority to grant, license, or assign any rights to be granted, licensed or assigned (as applicable) by Customer under this Agreement to Ageto.

## **SECTION 13. INDEMNIFICATION**

### **13.1. Infringement.**

13.1.1 Ageto will indemnify, defend, and hold harmless Customer and its directors, officers, employees and agents (the "**Customer Indemnified Parties**") against any and all losses, liabilities, judgments, awards and costs (including reasonable legal fees and expenses) in any claim, action, suit or proceeding brought by persons not a party to this Agreement (individually and collectively, "**Claim**") arising out of an allegation that any portion of the ARC Equipment (excluding any Customer Requested Specification and Customer Modification) when used as contemplated by this Agreement, infringes any third party's Intellectual Property rights. If a court or a settlement enjoins the use of any portion of the ARC Equipment, or if in Ageto's reasonable opinion, any portion of the ARC Equipment is likely to become the subject of a Claim, Ageto will have the option to modify such portion of the ARC Equipment so that it becomes non-infringing, to substitute a substantially equivalent non-infringing Software, to obtain for Customer a license to continue using the ARC Equipment, or if none of the preceding remedies are available, to refund a pro rata amount of fees paid with respect to such portion of the ARC Equipment and terminate this Agreement. Ageto will have no obligation under this Section 13.1.1 for any Claim if Ageto has offered such modified or replacement portion of the ARC Equipment, and the Claim or liability results from Customer's failure to use the modified or replacement portion of the ARC Equipment. Further, Ageto will have no obligation under this Section 13.1.1 for any Claims that result from: (i) use of the ARC Equipment in a combination with materials, services or products not supplied by Ageto, if such portion of the ARC Equipment would not have infringed the Intellectual Property rights of the party bringing the Claim absent 4876-2813-1360, v. 1

such combination; or (ii) modifications to the ARC Equipment by any party other than Ageto without Ageto's approval, if such portion of the ARC Equipment would not have infringed the Intellectual Property rights of the party bringing the Claim absent such modifications.

13.1.2 Customer will indemnify, defend, and hold harmless Ageto and its affiliates, directors, officers employees and agents (the "**Ageto Indemnified Parties**") against any and all losses, liabilities, judgments, awards and costs (including reasonable legal fees and expenses) in any Claim arising out of an allegation that the Customer Requested Specifications or Customer Modification infringes any third party's Intellectual Property rights or that Customer's use of the ARC Equipment in violation of this Agreement infringes any third party's Intellectual Property rights. If a court or a settlement enjoins the use of portion of Customer Requested Specifications or Customer Modification, or if in Customer's reasonable opinion, Customer Requested Specification or Customer Modification is likely to become the subject of a Claim of infringement, Customer will have the option, at Customer's sole cost and expense, to modify, or request that Ageto modify, the Customer Requested Specifications or Customer Modification so that it becomes non-infringing, to substitute a substantially equivalent non-infringing technology, or to obtain a license to continue using the Customer Requested Specification or Customer Modification.

**13.2. General Indemnification.** Customer shall indemnify Ageto Indemnified Parties against any and all losses, liabilities, judgments, awards and costs (including reasonable legal fees and expenses) in any third party Claim arising out of breach of this Agreement due to an act of omission by the Customer, its employees, or agents, including the Electrician, including any and all Claims relating to bodily injury or death or damage to tangible personal property arising directly out of any act or omission of Customer, its employees, or agents, including the Electrician, in the course of performing Customer's obligations hereunder.

## **SECTION 14. LIMITATION OF LIABILITY**

**14.1. DIRECT DAMAGES.** AGETO'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WILL NOT EXCEED IN THE AGGREGATE THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO AGETO UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT OR EVENTS GIVING RISE TO THE LIABILITY.

**14.2. NO CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL AGETO BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES, DATA, USE, ANY OTHER ECONOMIC ADVANTAGE, INCURRED BY AGETO ARISING OUT OF OR RELATING TO THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF AGETO KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

## **SECTION 15. CONFIDENTIALITY**

**15.1. Protection of Confidential Information.** Except as otherwise provided or permitted in this Agreement, the Receiving Party will not do any of the following, directly or indirectly, without the written consent of the Disclosing Party: (i) disclose, transfer, or otherwise communicate to any third party any Confidential Information; or (ii) use Confidential Information for any purpose other than to perform its obligations or exercise its rights under this Agreement. The Receiving Party will not permit any of its respective agents or employees to take any action prohibited by this Section 15.1.

**15.2. Availability of Injunctive Relief.** The unauthorized use or disclosure of Confidential Information would be highly prejudicial to the interests of the Disclosing Party and would materially damage the Disclosing Party. Therefore, the Disclosing Party will be presumed entitled to injunctive relief to protect its Confidential Information against unauthorized disclosure or use in violation of this Agreement.

**15.3. Court Order.** The Receiving Party will not be in breach of the obligations hereunder to the extent that, based upon the advice of counsel, it provides Confidential Information under a court order or discloses Confidential Information as required by law. Before the Receiving Party discloses Confidential Information under this Section 15.3, it must (i) notify the Disclosing Party of the court order or legal requirement, (ii) give the Disclosing Party a reasonable opportunity to contest or limit the required disclosure, and (iii) provide reasonable assistance at the Disclosing Party's expense, except to the extent it is illegal to do any of the foregoing.

**15.4. Return of Confidential Information.** At any time the Disclosing Party may request that the Receiving Party: (i) immediately deliver to the Disclosing Party the originals and all copies of any and all materials and writings received from, created for, or belonging to the Disclosing Party which relate to or contain any Confidential Information; or (b) that the Receiving Party permanently delete any and all Confidential Information from all computers and other electronic data storage devices in the Receiving Party's or its agent's or employee's control. Customer hereby acknowledges that making the foregoing request during the Term may materially affect the Services provided by Ageto. If Customer requests certain Services, Ageto may again obtain Confidential Information for which a subsequent request to return or delete must be made.

## **SECTION 16. TERM AND TERMINATION**

**16.1. Term.** The term of this Agreement shall begin on the effective date and shall remain in full force and effect until the Customer no longer uses the ARC Equipment and provides Ageto with at least thirty (30) days' notice of such non-use, unless otherwise terminated in accordance with this Agreement (the "Term").

### **16.2. Termination.**

**16.2.1 Automatic Termination.** This Agreement automatically terminates upon the earlier of: (i) return

of the ARC Equipment to Ageto for any reason whatsoever, or (ii) expiration of the Term.

### **16.2.2 Termination for Material Breach.**

Either party may terminate this Agreement immediately if the other party commits a material breach of this Agreement.

**16.3. Effect of Termination.** Upon termination of this Agreement, Ageto may, at its sole option, remove the Software from the Arc Equipment and terminate the Customer's rights to the Software.

## **SECTION 17. GENERAL TERMS**

**17.1. Assignment.** Neither this Agreement nor any right or obligation hereunder may be assigned or otherwise transferred by Customer (whether voluntarily, by operation of law, or otherwise) without the prior express written consent of Ageto; provided, however, that Customer, without such consent, may assign this Agreement and its rights and obligations hereunder in connection with any of the following transactions: i) the transfer or sale of all or substantially all of Customer's business or assets; ii) the sale, spin-off, or creation of a subsidiary or affiliated entity of the assignor; or iii) a merger, consolidation, change in control or similar transaction to which Customer is a party. Customer must provide Ageto with prompt written notice of any assignment, and any permitted assignee will be deemed to have assumed all the obligations of Customer under this Agreement, including those set forth in any end-user license agreements then in place. Ageto may freely assign this Agreement without Customer's consent.

**17.2. Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be sent by prepaid, certified mail, return receipt requested, express courier service, or by email (with proof of receipt) addressed to Ageto's address provided to Customer, or Customer's address provided to Ageto. The effective date of any notice sent pursuant to this Agreement shall be the date when actually received. Either party may change its address by written notice to the other party given in accordance with this Section 17.2.

**17.3. Modification.** No modification of this Agreement shall be effective unless contained in a writing signed by an authorized representative of each Party. This Agreement is not intended to give any rights to third parties.

**17.4. Independent Contractor.** This Agreement shall not render Ageto or any of Ageto's agents an employee, partner, agent of, or joint venturer of the Customer. Ageto is and will remain an independent contractor in its relationship to the Customer. No Party shall have the right, power, or authority to bind any other Party to the fulfillment of any condition, contract, or obligation or to create any liability binding on any other Party.

**17.5. Further Assurances.** Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carry out this Agreement.

**17.6. Force Majeure.** Ageto will not be liable for any failure or delay in performance of its obligations hereunder arising

out of or caused, directly or indirectly, by forces beyond Ageto's reasonable control, including without limitation by interruptions, loss, or malfunctions of utilities, communications, computer, or network services, or delays from a manufacturer.

**17.7. Severability.** If any provision of this Agreement is held invalid or unenforceable, the Parties intend that the provision be enforceable to the maximum extent permitted under law and therefore desire and request that the court reform the invalid or unenforceable provision to render it enforceable to the maximum extent permitted. If the court refuses to modify or reform the provision, then the provision shall be severed from this Agreement with no effect upon the remaining provisions of this Agreement.

**17.8. Equitable Remedies.** Customer acknowledges and agrees that Ageto would be irreparably harmed if Customer breached or threatened to breach this Agreement. Accordingly, Customer agrees that Ageto shall have the right to seek and obtain injunctive relief, including without limitation specific performance, without necessity of posting bond or other surety for any breach or threatened breach of this Agreement, in addition to all other rights and remedies available at law or in equity.

**17.9. Dispute Resolution.**

17.9.1 If any claim, question, dispute or disagreement (each, a "**Dispute**") arises from or in connection with this Agreement, the Parties shall use their best efforts to settle the Dispute amicably. If they cannot settle the Dispute amicably despite their best efforts, the Dispute must be resolved via arbitration, except as set forth below. Arbitration will occur in Denver, Colorado, in accordance with the Commercial Arbitration Rules (expedited procedures) of the American Arbitration Association then in effect, and shall be resolved individually, without resort to any form of class action or representative action, and Customer agrees that it shall not seek to aggregate any claims with other persons. Reasonable discovery will be allowed, the extent of which will be determined in the discretion of the arbitrator. The arbitrator may award attorneys' fees, costs and expenses to the substantially prevailing party if the arbitrator finds that the non-prevailing party's conduct was characterized by fraud or dishonesty or was otherwise patently unreasonable under the circumstances.

17.9.2 The existence of the arbitration proceedings, the contents of the arbitrator's award, and other non-public information regarding any Dispute will be Confidential Information, regardless of whether it is specifically designated as such.

17.9.3 The arbitrator's award will be final, non-appealable, and binding on the Parties and may be enforced by any court of competent jurisdiction. The arbitrator will render a brief written statement of the basis for the award, upon request of either party made before the award is issued.

17.9.4 Notwithstanding the other provisions of this Section 17.9, Ageto shall have the right to remove any

Dispute subject to binding arbitration to a court of law or to initially seek resolution of any Dispute in a court of law. Customer shall have no right to remove a Dispute subject to binding arbitration to a court of law or to initially seek resolution of any Dispute in a court of law.

**17.10. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, other than such laws, rules, regulations and case law that would result in the application of the laws of a jurisdiction other than the State of Colorado. CUSTOMER WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. Customer submits to the jurisdiction and venue of the state and federal courts located in Denver, Colorado, and waives any objection Customer may have to such courts.

**17.11. Attorneys' Fees.** If the Parties become involved in litigation or arbitration arising out of or related to this Agreement in which the services of an attorney or other expert are reasonably required, the prevailing Party will be fully compensated for the cost of its participation in such proceedings, including court costs, expenses and the reasonable costs incurred for attorneys' fees and experts' fees.

**17.12. Waiver.** No covenant or term of this Agreement shall be deemed to be waived by any Party except in a writing signed by a person authorized by such Party, and any waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver.

**17.13. Survival.** Any provisions of this Agreement that by its nature should continue beyond the expiration or termination of the Term or this Agreement to give effect to the Parties' intent shall survive expiration or termination of the Term or this Agreement including but not limited to SECTION 4.7, SECTION 5, SECTION 10, SECTION 11, SECTION 12, SECTION 13, SECTION 14, and SECTION 15.

**17.14. Counterparts.** This Agreement may be executed and delivered in counterparts (including by means of electronic signatures), all of which taken together will constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date executed by the Customer in accordance with the one of the methods set forth above in the Preamble ("**Effective Date**").

If by signing this Agreement:

Customer: \_\_\_\_\_

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

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

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

Address: \_\_\_\_\_

Email: \_\_\_\_\_



## Exhibit A

### Standard Fees and Expense Policy

Effective June 1, 2022

This Expense Policy may be updated and modified from time to time. Ageto shall notify Customer of any change to this Policy before billing the Customer under the new policy.

- **Commission Rate:**
  - A standard work day consists of up to 8 working hours per day, inclusive of lunch and all legally required breaks (“**Work Day**”). Work days exceeding 8 hours must be agreed in advance with Ageto.
  - A standard work week is 5 working days per week, Monday through Friday (“**Work Week**”).
  - If a commissioning trip extends over a weekend, each non-working weekend day will be charged at the rate of \$975 USD per day.
  - The standard Work Day rate is \$1,950 USD per day.
  - The standard Weekend Work Day rate is \$2,925 USD per day.
  - The standard Hardship location is \$2,925 USD per day.
  - Commissioning dates not confirmed twenty one (21) days prior to the start date will be charged a ‘Quick Mobilization’ fee equal to the standard Work Day rate.
  - Rates and schedules listed above are applicable for both onsite and remote commissioning.
- **Utilization Fee:**
  - In the event the site is not ready for commissioning after a signed ‘ARC Commissioning Ready Checklist’ has been received, a Utilization Fee of \$5,000 will be charged to cover the utilization of resources.
- **Travel Day:** Travel will be charged at \$975 USD per day.
- **Travel Expenses:**
  - Customer shall also pay reasonable travel expenses.
  - Travel expenses include airfare, ground transportation, lodging, meals, and incidentals.
  - Travel expenses will be billed at actual cost plus 10% administration fee.
  - Airfare will be booked per Ageto travel guidelines.
  - Lodging will be booked by Ageto and shall be a reasonable lodging location.