

# ENERGY SERVICES AGREEMENT

Purchaser: Gonzales Electric Authority	Seller: Bodega Microgrid Generation LLC
Address: 147 Fourth Street Gonzales, CA 93926	Address: 150 Main Street, Suite 130 Salinas, CA 93901
Contact: Mr. Rene Mendez	Contact: Mr. Brian Curtis
Phone: +1-831-675-5000	Phone: +1-888-321-0620
E-mail: <a href="mailto:rmendez@ci.gonzales.ca.us">rmendez@ci.gonzales.ca.us</a>	E-mail: <a href="mailto:bcurtis@concentricpower.com">bcurtis@concentricpower.com</a>
<p>Project Description:</p> <ul style="list-style-type: none"> <li>▪ An integrated electric power generation system, which is to be interconnected with GMEU's distribution facilities, to provide wholesale electric power service to Purchaser for delivery and resale to, and ultimate use by, GMEU's end-users in and around the Gonzales Agricultural Industrial Business Park, as described more fully in <b>[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]</b> <u>Appendix A</u>.</li> <li>▪ Generation facilities include solar generation, natural gas generation with provisions for landfill and other renewable gas, and a battery energy storage system, as described more fully in <b>Error! Not a valid result for table.</b></li> </ul>	
Key Terms for Energy Services:	
<b>14.5 MW<sub>AC</sub></b> <b>Solar Capacity</b>	<b>30 years</b> <b>Initial Term</b>
<b>10 MW<sub>AC</sub></b> <b>Thermal Generation Capacity</b>	<b>\$0. ____ /kWh</b> <b>Wholesale Energy Service Rate</b> <b>(See [SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] <u>Appendix C</u> for details)</b>
<b>10MW<sub>AC</sub> / 27.5 MWh</b> <b>Battery Energy Storage System</b>	<b>Performance</b> <b>Guaranteed</b>

This Energy Services Agreement ("Agreement") is made and entered into as of \_\_\_\_, 2020 ("Effective Date"), between the Gonzales Electric Authority, a joint powers agency ("Purchaser"), and Bodega Microgrid Generation LLC, a Delaware limited liability company ("Seller") (each a "Party" and collectively, the "Parties"). This Agreement includes and incorporates the Terms and Conditions below and the attached Appendices. Executed as of the Effective Date.

PURCHASER / Gonzales Electric Authority

SELLER / Bodega Microgrid Generation LLC

By: \_\_\_\_\_  
 Name: Rene Mendez  
 Title: Executive Director

By: \_\_\_\_\_  
 Name: Brian Curtis  
 Title: Managing Member

Approved as to form:

\_\_\_\_\_  
 Counsel

# TERMS AND CONDITIONS

## RECITALS

- A. The area in and around the Gonzales Agricultural Industrial Business Park, located in the City of Gonzales, California (the “Microgrid Program Area”), includes agricultural-focused industrial businesses, as described in Appendix A1. The Microgrid Program Area is constrained due to ongoing issues relating to the uncertain availability and quality of electric power. Power outages due to Public Safety Power Shutoffs instituted by the Electric Distribution Utility, such as the recent multi-day outages in 2019, and general power quality issues adversely affect existing occupants in the Microgrid Program Area, have the potential to adversely affect future occupants.
- B. On or about September 19, 2019, Purchaser released a Request for Interest for the development of the GEADirect Microgrid Development Program (the “Microgrid Program”) to support ongoing operations and economic development in the Microgrid Program Area through the generation and distribution of reliable, resilient, cost effective, and sustainable electric power to the Microgrid Program Area.
- C. On or about October 28, 2019, a team of companies led by Concentric Power, Inc. (“Concentric,” and along with the team of companies, the “Concentric Team”) submitted a proposal in response to the Request for Interest. The Concentric Team appeared for interviews with Purchaser and its consultants on November 19, 2019.
- D. After completing a detailed review of the proposals submitted by various respondents, Purchaser’s staff selected and notified the Concentric Team on November 20, 2019 that it had been selected to be recommended to the Purchaser’s Board of Directors as the partner to develop a microgrid energy program for the Microgrid Program Area.
- E. Purchaser and Concentric executed that certain Memorandum of Understanding with an effective date of December 3, 2019, which among other things, set forth that a separate project entity may be formed by the Concentric Team for purposes of contracting and holding assets of the project. As such, the project entity and Seller pursuant to this Agreement is Bodega Microgrid Generation LLC, which is wholly owned by Concentric.
- F. Seller desires to develop, design, own, construct, operate and maintain solar energy generation assets (“Solar Facilities”), firm energy generation assets (“Generating Facilities”), battery energy storage systems (“Storage Facilities”), a Concentric Power Advanced Microgrid Controller, substation assets and other balance of system components with a combined electrical capacity equal to at least the Installed Capacity specified in Section 1.1 (collectively, the “System”) on property described in [SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix A (collectively (“Site” or “Sites”), for provision of electric service to Purchaser.
- G. Under separate contractual arrangements with the Concentric Team, Purchaser and GMEU desire to develop, own, and operate distribution facilities necessary to distribute energy purchased from Seller at the Delivery Point(s) to the occupants of the Microgrid Program Area who become customers of GMEU (“Distribution Facilities”).
- H. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, certain renewable and other energy and any associated environmental attributes, capacity and capacity attributes, from the System.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants of the Parties set forth herein, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

## ARTICLE I: TERMS OF SERVICE

### 1. Project Information.

#### 1.1. System Summary.

Program Name: GEADirect Microgrid Development Program

Project Name: Bodega Microgrid Generation Project

Installed Capacity: 14.5 MW solar electric power  
10 MW thermal electric power  
10 MW / 27.5 MWh battery electric storage system

Contracted Capacity: A range of capacity established by Seller under a written notice stating (a) the amount of Contracted Energy capable of being delivered and (b) the date, no fewer than seven (7) and no more than ten (10) days from the

date of notice, on which the Contracted Energy shall be delivered to Purchaser to meet the aggregate load requirements of all of GMEU's end-users in the Microgrid Program Area and shall be connected to Distribution Facilities (a "Deliverability Notice"). The range of capacity will ramp from an initial minimum of 1.25 MW (solar and thermal electric power) upon the issuance of the initial Deliverability Notice to a maximum of 19 MW during the delivery term of this Agreement upon Seller's issuance of the Final Deliverability Notice.

2. Definitions. Capitalized terms used in this Agreement have the meanings given to them herein or in the Glossary of Terms.

3. Term.

3.1. Term. This Agreement shall become effective and legally binding as of the Effective Date and continue for a period of thirty (30) years after the date set forth in the first Deliverability Notice ("Initial Term"), unless and until terminated earlier pursuant to the provisions of this Agreement.

3.2. Renewal. This Agreement may be renewed ("Renewal Term") if (a) the Purchaser gives notice in writing at least one hundred eighty (180) days before expiration of the Initial Term or Renewal Term, as applicable, and (b) the Parties reach agreement in writing regarding the term and pricing hereunder with respect to such Renewal Term, in which case **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix C shall be updated to reflect such agreed-upon pricing for the applicable Renewal Term. The Initial Term and each Renewal Term shall be referred to herein collectively as the "Term."

3.3. Binding Nature. This Agreement shall be effective and binding as of the Effective Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Sections 1, 2, 3, 6 through 9, 11, and 17 through 23. The rights and obligations of the Parties under Sections 4, 5, 10, and 12 through 16 related to Seller's development of the System and Purchaser's purchase of energy shall be effective and binding only upon satisfaction or waiver of the conditions precedent set forth in Section 11. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon the date set forth in the first Deliverability Notice.

4. Energy Services.

4.1. Seller's Obligations.

4.1.1. Development and Operation of System. Subject to the terms of this Agreement, during the Term, Seller shall:

- a. develop, install, operate, and maintain the System in accordance with Prudent Industry Practice, Applicable Law, this Agreement, and applicable manufacturers' specifications for the solar panels, engines, batteries, and other major components of the System;
- b. procure all necessary fuel and other inputs appropriate and required for the generation of energy and the proper operation of the System; and
- c. repair, replace, and/or maintain the various components of the System in accordance with Section 12, as required to ensure that the System meets the Contracted Capacity.

4.1.2. Energy Services. Subject to the terms of this Agreement, during the Term, Seller shall:

- a. provide, deliver, and sell to Purchaser all electric energy required by Purchaser for delivery to GMEU to meet the aggregate electric load of all end-users of GMEU in the Microgrid Program Area ("Contracted Energy") within the range of Contracted Capacity then in effect under the rates, terms, and conditions set forth in Section 5; and
- b. deliver to Purchaser any Environmental Attributes, Capacity and Capacity Attributes associated with Contracted Energy that is delivered to Purchaser.

4.2. Purchaser's Obligations.

4.2.1. During the Term of this Agreement, Purchaser agrees to purchase and receive Contracted Energy delivered to Purchaser at the applicable Delivery Point(s) under the rates, terms, and conditions set forth in Section 5. Purchaser shall also receive any Environmental Attributes, Capacity and Capacity Attributes, associated with such Contracted Energy as part of its payment as set forth in Section 5.

4.2.2. **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Purchaser has informed Seller, and Seller acknowledges, that GMEU will bill its end-users and collect payment for Contracted Energy that GMEU receives from Purchaser for resale in accordance with Section 5.5; provided, however, that Purchaser's obligations to pay for Contracted Energy (including requirements to purchase the Minimum Purchase Quantity of Contracted Energy) under Section 5 shall not be affected by the timing and payment (or lack thereof) by such retail customers.

4.2.3. Purchaser shall provide Seller with information regarding the electric load of end-users of GMEU necessary for Seller to meet load obligations with Contracted Energy as required in Section 4.1.2.

#### 4.3. Transfer, Title, and Risk of Loss.

4.3.1. Transfer of Contracted Energy at Delivery Point. Seller shall be responsible for the delivery of Contracted Energy to each Delivery Point. Seller shall own all Contracted Energy prior to delivery to the applicable Delivery Point(s). Purchaser shall own all Contracted Energy from and after receipt at the applicable Delivery Point(s). Applicable Delivery Point(s) are set forth in Appendix Error! Reference source not found.

4.3.2. Title and Risk of Loss. As between the Parties, Seller will maintain the risk of loss with respect to (and shall be responsible for any property damage or injuries caused by) the Contracted Energy produced by and delivered from the System up to the Delivery Point(s). Purchaser will maintain the risk of loss with respect to and shall be responsible for any property damage or injuries caused by the Contracted Energy generated by and delivered from the System from and after the Delivery Point(s). Title to Contracted Energy shall pass from Seller to Purchaser at the Delivery Point(s). Title to and risk of loss of Environmental Attributes shall pass from Seller to Purchaser upon the transfer of such Environmental Attributes in accordance with WREGIS.

#### 4.4. Seller's Reserved Rights and Restrictions.

4.4.1. Upon and after the date the System is interconnected to the distribution or transmission grid of the Electric Distribution Utility or the CAISO controlled grid, Seller may, at its sole cost and expense, sell to one or more third parties, other than occupants in the Microgrid Program Area, additional energy or Contracted Energy generated by the System that Purchaser fails to receive or purchase in accordance with this Agreement (collectively, "Excess Energy"), ancillary services, capacity, and other grid services; provided, however, that Seller shall ensure that any sale of Excess Energy and provision of the grid services by Seller shall not adversely affect Seller's obligations under this Agreement; and further provided, that Seller shall prioritize the care and benefit of Purchaser, the System, GMEU, and its end-users, over and above revenue to be generated from the sale of Excess Energy and grid services described in Section 4.4.1.

4.4.2. During the Term of this Agreement and provided that Purchaser is not in Default, neither Seller nor its Affiliates may sell or deliver energy from the System to any occupant of the Microgrid Program Area. Furthermore, neither Seller nor its Affiliates may enter into in any agreement that causes or allows it to generate, sell, distribute or deliver energy to any occupant of the Microgrid Program Area from any distributed energy resource without the express written consent of Purchaser; except for the existing and potential transactions for behind the meter energy services by and between Seller's affiliates and Taylor Farms and its affiliates, related to the existing 2 MW distributed energy resource currently operating at the Taylor Farms location in the Microgrid Program Area, as it is configured as of the Effective Date and without an increase in the energy output thereof. If this Agreement is terminated early pursuant to its terms, neither Seller nor its Affiliates may sell or offer to sell energy to occupants of the Park for a period of twelve (12) months following such termination, except as provided in Section 5.5.4.

#### 4.5. Purchaser's Reserved Rights and Restrictions.

4.5.1. Purchaser shall purchase from Seller all Contracted Energy and other energy services for use by GMEU's end-users in the Microgrid Program Area and shall not procure from any source other than from Seller without first providing Seller the opportunity to provide such energy and other energy services on terms acceptable to Purchaser and Seller. Notwithstanding the preceding sentence, Purchaser may provide net-energy metering or other feed-in tariff or similar services to GMEU's customers in the Microgrid Program Area consistent with Applicable Law, provided that (i) such entity seeking net-energy metering or other feed-in tariff or similar services is a retail electric customer of GMEU, (ii) that generating facility is a renewable electric generating facility under the California Energy Commission's Renewable Portfolio Standard Guidebook, as it may be amended from time to time, and (iii) such net-energy metering or other feed-in tariff or similar services shall not affect the Minimum Purchase Quantity of Contracted Energy as set forth in Appendix C1.

4.5.2. If any end-user in the Microgrid Program Area discontinues electric service from GMEU, Purchaser shall be entitled to arrange for the delivery and sale of such Contracted Energy attributable to that departing customer to other GMEU end-users in the Microgrid Program Area or to other parties and to receive the revenues from any such transaction(s). In such a scenario, Seller has no additional obligation other than to deliver such energy to the designated Delivery Point(s).

#### 5. Rate, Payments, Billing.

5.1. Energy Service Charge. Following receipt of the first Deliverability Notice, Purchaser shall pay to Seller a monthly payment in an amount equal to the Energy Service Charge calculated as follows:

5.1.1. The monthly "Energy Service Charge" shall be equal to the product of the Contracted Energy delivered during the applicable month as measured by the Meter multiplied by the Energy Service Rate.

5.1.2. The "Energy Service Rate" shall be comprised of the Fixed Rate, the Non-Fuel Variable Rate, and the Fuel Rate, each of which is set forth in Appendix C3. The Energy Service Rate is subject to annual adjustment pursuant Appendices C3 and C4.

5.1.3. Purchaser agrees that it shall purchase no less than the Minimum Purchase Quantity of Contracted Energy as set forth in Appendix C1, regardless of whether such quantity can be or actually is used by GMEU's end-users in the Microgrid Program Area, provided that (i) such capacity is available as indicated on the most recent Deliverability Notice and (ii) any inability to use such capacity in the Microgrid

Program Area is not the result of Seller's negligence or willful misconduct.

5.1.4. Annual Adjustment. Effective January 1 of each year following the first Delivery Notice, the Energy Service Rate shall be adjusted as set forth in Appendix C4, including application of the annual Energy Service Rate increase cap (the "Annual Adjustment"). The annual Energy Service Rate for the first year of deliveries of Contracted Energy pursuant to this Agreement is reflected in the schedule in Appendix C3. At least thirty (30) days prior to the effective date of each Annual Adjustment, Seller shall provide Purchaser with the calculation of the Annual Adjustment, as well as any supporting documentation. If requested, Seller and Purchaser shall meet and confer regarding the Annual Adjustment. Any disputes arising thereafter shall be handled in accordance with Section 22.

5.2. Fuel Procurement. Seller shall procure at its sole cost and expense the fuel supply for the System and bear all commodity risk for such procurement. Notwithstanding the foregoing, the Fuel Rate may be adjusted consistent with the terms of Appendix C4.D.

5.3. Metering.

5.3.1. Seller shall provide a system of standard revenue grade meters to measure Contracted Energy that is delivered to Purchaser at the Delivery Point(s). Such metering systems may be referred to collectively or individually as a "Meter" or the "Meters", as applicable. The Meters shall be installed and maintained at Seller's sole cost and expense. Seller shall test each Meter not less than once every two (2) years, or more frequently in accordance with the manufacturers' specification and any applicable ASTM standard and will, upon request, provide copies of all reports regarding the results of such testing to Purchaser. The tests shall be conducted by independent third parties duly qualified and licensed to conduct such tests or using a mutually agreed upon alternative methodology.

5.3.2. Seller shall gather and maintain the data from each Meter (the "Meter Data"). Ownership of all Meter Data shall remain with Seller. Notwithstanding the foregoing, Seller shall make Meter Data available to Purchaser in a timely fashion to allow the GMEU to bill its end-users.

5.3.3. Purchaser, at its own expense, shall have the right to audit the Meter Data upon request for the prior twenty-four (24) months.

5.3.4. At Purchaser's option, Purchaser may install, own, and operate electric metering devices at the Delivery Point(s) ("Purchaser's Check Meters"). The installation, operation, and maintenance of Purchaser's Check Meters shall be performed entirely by Purchaser or its agent at Purchaser's sole cost and expense. Purchaser's Check Meters shall be for review purposes only and shall not be used for the measurement of Contracted Energy.

5.3.5. If the independent testing described in Section 5.3.1 above indicates that a Meter is in error by more than plus or minus one percent (+ or - 1%), then (a) Seller shall promptly repair or replace such equipment at its sole cost and expense, and (b) Seller shall bear the cost of such testing; if such independent testing indicates that a Meter is in error by less than plus or minus one percent (+ or - 1%) Purchaser shall bear the cost of such testing.

5.3.6. If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by more than plus or minus one percent (+ or - 1%), a billing adjustment shall be made correcting all measurements by the inaccurate or defective Meter for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Purchaser's Check Meters, if any, or the best available data that can be reasonably ascertained by Purchaser, subject to review and approval by Seller (such approval not to be unreasonably withheld). If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the Meter. The billing adjustment shall be made on the next invoice following the determination of the inaccuracy.

5.4. Invoicing.

5.4.1. Following the first Deliverability Notice, Seller will invoice Purchaser on a monthly basis within ten (10) days following the close of each calendar month. The invoice will include the amount of Contracted Energy delivered to Purchaser, the Energy Service Charge, charges for other services and fees agreed to by Purchaser, a credit for Performance Guarantees, as applicable, a credit for the revenues Seller received, if any, for the sale of Contracted Energy to third parties pursuant to Section 4.4.1 to the extent Purchaser is required to pay for such Contracted Energy, and the total amount due from Purchaser, for the billing period ("Invoice"). Payment is due within forty-five (45) days of the date of the Invoice ("Due Date"), which period shall not commence until Seller delivers the applicable Invoice. Seller's failure to deliver an Invoice shall not relieve Purchaser of its obligation to pay for the incurred charges, once such incurred charges are invoiced, nor shall it be construed as a waiver of Seller's right to invoice Purchaser.

5.4.2. In the event any portion of any Invoice is in dispute, Purchaser shall pay the undisputed amount when due and shall promptly notify Seller of the basis for the dispute. Disputes shall be discussed by authorized representatives of the Parties, and any failure to agree shall be subject to resolution pursuant to Section 22. Upon resolution of any dispute, the applicable amount of payment or refund shall be paid within twenty (20) days.

5.4.3. Late payments or refunds per Section 5.4.3 shall accrue interest at a per annum rate equal to the lesser of: (i) ten percent (10%) or (ii) the maximum rate permissible under Applicable Law.



5.4.4. Records and Audits. Seller shall maintain all records pertaining to its performance of services under this Agreement (including but not limited to all billings, costs, metering, and Environmental Attributes) sufficient to verify all costs claimed to have been performed (including Contracted Energy delivered) pursuant to this Agreement for a period of not less than two (2) years following final payment made by Purchaser hereunder, and such records shall be subject to examination upon Purchaser's reasonable request.

#### 5.5. Payments and Liability Limitation.

5.5.1. Any payments under this Agreement by Purchaser to Seller shall be made from a controlled account that is (i) established prior to any sale of Contracted Energy from Seller to Purchaser for the purpose of collecting payments from end-users to the GMEU and remitting payments from Purchaser to Seller, and (ii) established pursuant to an account control agreement, an intercreditor and/or collateral agreement, and any other necessary agreement required to establish the controlled account ("Lockbox Account").

5.5.2. Purchaser shall ensure that the GMEU directs each end-user customer in the Microgrid Program Area to remit payments to the Lockbox Account.

5.5.3. Following the seventh (7<sup>th</sup>) anniversary of the Final Deliverability Notice **Error! Reference source not found.**, Purchaser's liability for payment of (i) any Invoice issued by Seller pursuant to Section 5.4.1 or (ii) the Termination Fee pursuant to Section 7.3 shall be limited to the assets in the Lockbox Account.

5.5.4. **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** [Payments and Liability Limitation.

5.5.4.1. Lockbox Account. Any payments under this Agreement by Purchaser to Seller shall be made from a controlled account that is (i) established prior to any sale of Contracted Energy from Seller to Purchaser for the purpose of collecting payments from end-users to the GMEU and remitting payments from Purchaser to Seller, and (ii) established pursuant to an account control agreement, an intercreditor and/or collateral agreement, and any other necessary agreement required to establish the controlled account ("Lockbox Account").

5.5.4.2. Purchaser shall ensure that the GMEU directs each end-user customer in the Microgrid Program Area to remit payments to the Lockbox Account.

**5.5.4.3. -5.5.4.4. The Parties have not completed negotiations concerning the process, procedures and the rights and obligations of the Purchaser and Seller in the event of an early termination of the Agreement. The Parties will continue to diligently pursue resolution of the involved issues and will include and explain the relevant provisions when the final version of the ESA is brought before the Board for consideration at the Authority meeting of August 17, 2020.**

5.6. Utility Charges. Seller is not responsible to pay for any Utility Charges, including, without limitation, Power Charge Indifference Adjustment charges, non-bypassable charges, departing load charges and/or standby charges incurred by Purchaser, GMEU or its end-users. Within forty-five (45) days following the Effective Date and for the following two (2) calendar years thereafter, the Parties shall analyze all such Utility Charges to determine if the cost to GMEU's end-users is expected to exceed \$0.0200/kWh, and the Parties shall meet and confer to develop an approach to resolve the expected costs of the Utility Charges.

5.7. Taxes. Seller shall pay all applicable income, gross receipts, ad valorem, business or license, personal property or real property or other taxes and fees imposed on Seller in connection with its receipt of payment for provision of the Energy Services or its ownership of the System. Purchaser shall pay all applicable income, gross receipts, ad valorem, business or license, personal property or real property or other similar taxes and fees imposed on Purchaser.

#### 6. Termination.

6.1. Termination upon Expiration of the Term. The electricity supply period under this Agreement commences on the date set forth in the first Deliverability Notice and continues for the duration of the Initial Term and any Renewal Terms, unless earlier terminated as provided for in this Agreement.

#### 6.2. Purchaser's Early Termination Rights.

6.2.1. **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Early Termination. Purchaser may not terminate this Agreement for convenience prior to the seventh (7<sup>th</sup>) year of the Initial Term. Notwithstanding the foregoing, Purchaser may terminate this Agreement prior to the seventh (7<sup>th</sup>) year of the Initial Term (1) if Seller is in default under this Agreement and fails to cure such default within the applicable cure period as set forth under this Agreement, and (2) pursuant to any provision of this Agreement that provides Purchaser may terminate this agreement early.

6.2.2. **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Early Termination After Year 7. On any date after the seventh (7<sup>th</sup>) anniversary of the first Deliverability Notice, and so long as Purchaser is not in default under this Agreement, Purchaser may terminate this Agreement for convenience in its sole discretion and without cause (an "Early Termination"), by (a) giving at least two hundred seventy (270) days' prior written notice to Seller of a termination date, and providing for a Transition Period as set forth in Section 5.5.4. The limitation on Purchaser's liability for payment set forth in Section 5.5.3 shall apply to Purchaser's termination for convenience under this Section 6.2.2.

6.2.3. **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Notwithstanding any other provision herein, Purchaser may terminate this Agreement at any time during the first twenty-four months following the Effective Date if there is instituted or pending any action or proceeding by any Governmental Authority, or by any other Person, domestic, foreign or transnational, before any Governmental Authority, (i) involving any challenge to, or seeking any damages or other relief in connection with, the transactions contemplated hereby or related thereto, including relating to GMEU and service to end-users, (ii) that may have the effect of preventing, delaying, making illegal, or imposing limitations or conditions on or otherwise interfering with the transactions contemplated hereby or related hereto, including transactions between GMEU and end users, or (iii) that otherwise would be reasonably be expected to have a material adverse effect on the rights of either Party.

### 6.3. Seller's Early Termination Rights.

6.3.1. Termination Prior to Commencement of Installation. In addition to the mutual conditions precedent set forth in Section 11, Seller may in its sole discretion terminate this Agreement by written notice to Purchaser delivered prior to the Commencement of Installation in the event that, through no fault or inaction of Seller (a) Seller is unable to procure suitable financing for the installation of the System or other project financing, (b) Seller is unable to obtain any material permit, license, and other approval required for the installation and operation of the System, or any third party imposes unforeseen material adverse installation or operational requirements, (c) Seller is unable to obtain a natural gas supply or, if applicable, interconnection, for the System or (d) Seller is unable to obtain from any Person other than the City of Gonzales any material property right necessary to construct, operate, and maintain the System. If Seller terminates this Agreement pursuant to this Section 6.3.1, Seller shall pay Purchaser [\_\_\_\_\_] dollars (\$[\_\_\_\_]) as liquidated damages (but not a penalty) and upon such payment, the Parties will be released from all obligations and liability under this Agreement.

6.3.2. Termination During Installation. In addition to the mutual conditions precedent set forth in Section 11, in the event that Seller encounters material adverse conditions in the installation of the System that were unforeseen and could not have been discovered by Seller through reasonable diligence prior to the installation of the System, Seller shall promptly notify Purchaser in writing of such material adverse conditions. Within thirty (30) days following receipt by Purchaser of such notice, the Parties will meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. Any disputes arising thereafter shall be handled in accordance with Section 22.

## 7. Default and Remedies

7.1. Events of Default. In the event of a Party's breach of any payment obligation hereunder or any material breach of any representation, warranty, covenant, obligation or other term of this Agreement, the non-defaulting Party shall provide the defaulting Party with written notice of the default, which notice shall describe the default in reasonable detail. From receipt of written notice of default, the defaulting Party shall have ten (10) days to cure any payment default and thirty (30) days to cure any other material breach or default; provided, however, that with respect to non-payment defaults, the cure period may be extended by some mutually agreeable period, so long as the defaulting Party has begun curative action and is continuing to proceed diligently, using commercially reasonable efforts, to complete such curative action. It shall be an event of default by a Party if such Party fails to cure any such breach within the applicable cure period provided for in this section.

7.2. Other Events of Default. In addition to the foregoing, with respect to a Party, it shall be an event of default if:

- a. such Party admits in writing to its inability to pay its debts as they become due;
- b. such Party files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other Applicable Law or statute of the United States of America or any state, district or territory thereof;
- c. such Party makes an assignment for the benefit of creditors;
- d. such Party consents to the appointment of a receiver, or has a receiver appointed by a court of competent jurisdiction, of the whole or any substantial part of its assets;
- e. such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days of such filing; or
- f. under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

7.3. **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Seller Remedies. Following the issuance of the first Deliverability Notice, if an event of default by Purchaser under Sections 7.1 or 7.2 has occurred and is continuing, then following the expiration of any applicable cure period, Seller may, in its discretion: (a) suspend its performance under this Agreement without liability to Purchaser, including providing electricity from the System; (b) collect on any amounts due with respect to (1) any previously existing payment obligations, (2) any obligation under Section 8 or Section 17.5.2 to the extent any such obligation or liability relates to third party claims for personal injury or death or property damage, and (3) any electricity delivered to Purchaser prior to the date of any termination; and/or (c) terminate this Agreement. Upon any such Seller election to terminate this Agreement, Purchaser shall pay the then-applicable Termination Fee set forth in Appendix F1, subject to the limitation set forth in Section 5.5.3, to Seller within thirty (30) calendar days, upon which full payment this Agreement will

be terminated. Seller's remedies set forth in this section shall be cumulative and not exclusive.; provided, however, that Seller's sole and exclusive remedy under this Agreement if it chooses to terminate this Agreement pursuant to this Section 7.3 shall be payment by Purchaser to Seller as liquidated damages, and not a penalty, of the sum of the then-applicable Termination Fee, subject to the limitation set forth in Section 5.5.3, and any and all other amounts then owed by Purchaser to Seller under this Agreement as of the date of termination as set forth above.

Prior to the first Deliverability Notice, if a Purchaser default has occurred and is continuing, Seller may pursue all remedies or damages at law or in equity against Purchaser, subject to the terms of this Agreement.

**7.4. [SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Purchaser Remedies.** If an event of default by Seller under Sections 7.1 or 7.2 has occurred and is continuing, then following the expiration of any applicable cure period, Purchaser shall receive all amounts then in the Lockbox, and may, in its discretion: (a) suspend its performance under this Agreement; (b) apply all amounts available under the Development Security against any amounts then payable by Seller to Purchaser under this Agreement; (c) terminate this Agreement; and/or (d) purchase the System for a price equal to an amount equal to the then Fair Market Value, as determined by an a nationally recognized independent appraiser, using the Asset Purchase Agreement in Appendix I. Seller shall also pay Purchaser an amount sufficient to reimburse GMEU's end-users for their increased costs in obtaining an alternative supply of energy over the remaining term of the end-user agreements. Purchaser may pursue all other remedies or damages at law or in equity against Seller, subject to the terms of this Agreement.

**7.5. Financing Cooperation.** Purchaser acknowledges that Seller may wish to (i) finance or refinance its investment in the development, installation, and operation of the System or (ii) pledge its interest in the System. Purchaser also recognizes that one of the preconditions of a lender to taking such actions may be Purchaser entering into one or more direct agreements with a lender that, among other things, gives to such lender a right to perform or assume Seller's rights and obligations under this Agreement and/or the right to receive notice of and cure Seller's defaults under this Agreement.

Accordingly, if any cooperation with respect to any financing is to be requested of Purchaser, (i) Seller shall provide Purchaser with prior written notice of any such financing transaction, including information regarding the identity and qualifications of the lender, and (ii) Purchaser shall execute and deliver such consent forms, acknowledgements, estoppel certificates, legal opinions, other documents, and agreements in each case, as reasonably requested by Seller or reasonably required by a lender (including as may be required to evidence a collateral assignment by Seller of this Agreement to such lender), each commensurate with the amount and type of financing to which such documents relate. Seller shall reimburse, or shall cause the lender to reimburse, Purchaser for Purchaser's reasonable costs, including attorney's fees, associated with the review, preparation, negotiation, execution, and/or delivery of any documents requested by Seller or the lender, and provided by Purchaser, pursuant to this Section 7.5.

## 8. Confidentiality; Publicity.

**8.1. Confidential Information.** Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiaries, and affiliates, and its and their respective directors, officers, employees, representatives and agents, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Applicable Law: (i) all documents, data, drawings, studies, projections, plans, and other written information that relate to economic benefits to, or amounts payable by, either Party under this Agreement, and (ii) documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ((i) and (ii) the "Confidential Information"). The provisions of this Section 8 shall survive and continue to be binding upon the Parties for a period of one (1) year following the date of termination of this Agreement.

**8.2. Non-Confidential Information.** Notwithstanding Section 8.1 above, information shall not be considered Confidential Information which:

- a. is disclosed with the prior written consent of the originating Party;
- b. was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement;
- c. was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation; or
- d. is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

**8.3. Permitted Disclosures.** Either Party may, without violating this Section 8, disclose matters that are made confidential by this Agreement:

- a. to its counsel, accountants, auditors, advisors, other professionals, consultants, credit rating agencies, actual or prospective co-owners, investors, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries, affiliates or parent;
- b. to Governmental Authorities and parties involved in any proceeding in which either Party is seeking a permit, certificate or other regulatory approval or order necessary or appropriate to carry out this Agreement; or
- c. to Governmental Authorities or the public as required by any Applicable Law, regulation, order, rule, or ruling.



8.4. Notice of Disclosure Requests. If a Party is requested or required, pursuant to any Applicable Law, regulation, order, rule or ruling, to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that, at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

8.5. Public Records Act. Seller acknowledges that Purchaser is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250, *et seq.* ("CPRA"), and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950, *et seq.*

If Purchaser receives a CPRA request for Confidential Information of Seller, and Purchaser determines such Confidential Information is subject to disclosure under the CPRA, then Purchaser will notify Seller of the request and its intent to disclose the documents. Purchaser, as required by the CPRA, will release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify, and hold harmless Purchaser from and against all suits, claims, and causes of action brought against Purchaser for Purchaser's refusal to disclose Confidential Information of Seller to any Person making a request pursuant to the CPRA.

8.6. Publicity. The Parties agree that they may, from time to time, issue press releases regarding the System and this Agreement and, as necessary, that they shall cooperate with each other in connection with the issuance of such releases. Each Party shall obtain written permission to use the name of the other Party in a press release or other marketing material. Each Party may take and display photographs of the System and may disclose the System's component parts and nameplate capacity rating in its advertising and promotional materials without the consent of the other Party.

8.7. Case Study. Seller may list Purchaser in a "Customers" or "Case Studies" section of Seller's website or printed media. Seller may develop and publish a case study highlighting the main benefits provided by the System. Identification of the Purchaser on Seller's website or in printed media and/or as part of a case study and use of Purchaser's logo are subject to Purchaser's written consent.

8.8. End-User Information. In no event may Seller publish the name or other identifying information of an end-user of GMEU without the end-user's written consent.

8.9. Tax Treatment. Notwithstanding anything to the contrary contained herein, in order for the transactions contemplated by this Agreement not to be considered a "Confidential Transaction" within the meaning of United States Treasury Regulation 1.6011-4(b)(3), the Parties (and representatives of the Parties) may consult any tax advisor/consultant regarding the tax treatment and tax structure relating to the transactions contemplated by this Agreement; and may at any time disclose to any Person, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including tax opinions or other tax analysis) that are provided relating to such tax treatment or tax structure.

## ARTICLE II: SYSTEM AND OPERATIONS

### 9. Ownership.

9.1. Ownership of System. Unless Purchaser exercises its purchase option with respect to the System, as between the Parties, and subject to the provisions of the land rights agreement between Seller and any third-party and any financing agreements, the System: (a) shall be owned, operated, and maintained solely by Seller during and after the Term of this Agreement; (b) shall be and shall remain Seller's personal property at all times, and Seller and its permitted successors or assigns shall at all times retain title to and be the legal and beneficial owner of the System; (c) may not be sold or leased to any person unless all of Seller's rights and obligations under this Agreement are also assigned to such person in accordance with Section 19; and (d) may be removed by Seller in accordance with the terms and conditions of this Agreement. Neither the System nor any portion or component thereof may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Purchaser unless Purchaser has acquired title to such portion or component. Purchaser shall not directly or indirectly cause or permit the System or any portion or component thereof to become subject to any lien, encumbrance, pledge, levy or attachment ("Liens") arising by, under or through Purchaser. In the event any Lien is filed against any portion(s) of the System for work claimed to have been done for, or materials claimed to have been furnished to, Purchaser, Purchaser will, within ten (10) business days after Purchaser becomes aware of the filing of the Lien and at Purchaser's sole cost and expense take such action as may be required to cause such Lien to be discharged, by bond or otherwise, and released of record. Conversely, Seller shall not directly or indirectly cause or permit any portion(s) of the Site that is owned by the City of Gonzales or a related entity to become subject to any Liens arising by, under or through Seller. In the event any Lien is filed against any portion(s) of the Site that is owned by the City of Gonzales or a related entity for work claimed to have been done for, or materials claimed to have been furnished to, Seller, Seller will, within ten (10) business days after Seller becomes aware of the filing of the Lien and at Seller's sole cost and expense take such action as may be required to cause such Lien to be discharged, by bond or otherwise, and released of record.

9.2. Ownership of Environmental Attributes, Capacity and Capacity Attributes, and Environmental Financial Incentives.

9.2.1. Environmental Attributes **Error! Reference source not found.** Purchaser is entitled to the benefit of and will purchase all ownership interest in the Environmental Attributes associated with Contracted Energy delivered to Purchaser. Seller will cooperate with

Purchaser in registering, securing, and transferring any and all RECs associated with Contracted Energy to Purchaser. The consideration for the transfer of Environmental Attributes is contained in the Energy Service Charge for the Contracted Energy.

9.2.2. **Capacity and Capacity Attributes.** For and in consideration of Purchaser entering into this Agreement, and as part of the agreement between Purchaser and Seller to purchase and sell the Contracted Energy on the terms and conditions set forth herein, Seller shall transfer to Purchaser, and Purchaser shall accept from Seller, all of the Capacity and Capacity Attributes associated with Contracted Energy that may exist from time to time; provided, however, Seller provides no representation as to the value (if any) of the Capacity and Capacity Attributes transferred to Purchaser pursuant to this Agreement. SELLER MAKES NO WARRANTY REGARDING THE CAPACITY OR CAPACITY ATTRIBUTES (INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY), WHETHER EXPRESS, IMPLIED OR STATUTORY IN NATURE, IN CONNECTION WITH THIS SECTION 9.2.2. Purchaser and Seller agree that the consideration for the transfer of Capacity and Capacity Attributes is contained within the relevant prices for Contracted Energy. Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, execute any and all documents or instruments necessary to enable Purchaser to use all of the Capacity and Capacity Attributes associated with Contracted Energy (that exist from time to time) committed by Seller to Buyer pursuant to this Agreement.

9.2.3. **Environmental Financial Incentives.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in tax credits and other attributes derived from ownership and operation of the System. Purchaser will cooperate with Seller in obtaining, securing and transferring any and all tax credits; provided that Purchaser is not obligated to incur any costs or expenses in connection with such actions unless reimbursed by Seller. If any RECs or equivalent incentives are paid directly to Seller, Seller must immediately pay such amounts over to Purchaser.

9.3. **Ownership of System Design and System Data.** All System drawings, calculations, spreadsheets, specifications, supplier information, discussion notes, and other information related to the System, including but not limited to the System design or any performance data generated by the operation of the System, and all intellectual property produced in relation to the foregoing, are owned or licensed by Seller and may not be shared by Purchaser outside the Purchaser's organization or Purchaser's consultants and attorneys, or used for any purpose other than in relation to this Agreement, or as required under public records or other Applicable Law, without the express written consent of Seller.

9.4. **Ownership of Intellectual Property.** Nothing in this Agreement shall be construed to convey to Purchaser a license or other right to trademarks, copyrights, technology or other intellectual property of Seller (or any Affiliate of Seller).

9.5. **System Purchase Option.**

9.5.1. At the end of the seventh (7<sup>th</sup>) complete calendar year after the date set forth in the Final Deliverability Notice, tenth (10<sup>th</sup>) complete calendar year, and every fifth (5<sup>th</sup>) complete calendar year thereafter, and at the end of the Initial Term and each Renewal Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System, rights to Site(s), and/or components thereof from Seller on any such date for a purchase price equal to the Fair Market Value of the System, rights to Site(s), and/or components thereof. To exercise such option, Purchaser must provide written notification to Seller of its intent to purchase at least one hundred eighty (180) days prior to the end of the applicable year or the Initial Term or Renewal Term, as applicable, and the purchase will be completed prior to the end of the applicable year or the Initial Term or Renewal Term, as applicable.

9.5.2. The purchase option shall be completed on the form attached hereto as Appendix I.

9.5.3. **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** The purchase price with respect to the Purchase Option shall be the Fair Market Value at such time the purchase option is exercised. The "Fair Market Value" of the System shall be the value determined by a nationally recognized independent appraiser selected by the Parties, with experience and expertise in the solar photovoltaic, battery, engine, and microgrid industries to value such equipment and systems. The Fair Market Value of the System shall be based upon its value in place on an "as is", "where is" basis, and disregarding the costs of removal, shipping, and reinstallation. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The costs of the appraisal shall be borne by the Purchaser. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by the two (2) appraiser firms, one proposed by each Party.

If Purchaser accepts the purchase price determined by the appraiser and proceeds with the purchase of the System, upon receipt by Seller of the applicable purchase price and all other amounts then owing by Purchaser to Seller, the Parties shall execute the Asset Purchase Agreement and all documents necessary to cause: (i) title to the System to pass from Seller to Purchaser on an "as is", "where is" basis; and (ii) Seller to be released from, and Purchaser to assume all of Seller's obligations under, any contracts regarding the System to which Seller is a party as of such a transfer of title to the System. Seller shall also: (1) remove any encumbrances placed on the System and Sites by Seller prior to or in conjunction with such a transfer of title to the System; and (2) transfer from Seller to Purchaser, to the extent transferable, the remaining period, if any, all warranties for the System.

10. System Design and Installation.

10.1. **Design and Assembly of the System.**

10.1.1. The Parties agree that the System shall be sized and configured to meet the Contracted Capacity.

10.1.2. Seller shall design, engineer, assemble, install, and commission the System in a good and workmanlike manner and in accordance with Applicable Law and Prudent Industry Practice, including conducting site-specific engineering. Seller may, from time to time at its sole cost and expense, and upon notice to and consultation with Purchaser, revise the design of the System, and/or elect to replace any portion of the System with different components, technologies, parts of a different make, model or manufacturer as long as such revisions do not compromise the System's ability to meet the Contracted Capacity. For the avoidance of doubt, Seller shall also notify and consult with Purchaser prior to any increase or decrease in the Installed Capacity.

10.1.3. No designs, plans or architectural renderings for the System shall be deemed final until the completion of environmental review in accordance with CEQA. All applications submitted by the Seller for the approvals and entitlements required for development of the System at the Site shall be based upon final System designs, plans, and architectural renderings.

10.1.4. Prior to the Commencement of Installation, Seller will seek a technical review by an independent engineer, which may be observed by Purchaser. Such technical review will be to verify the commercial viability of the Concentric Power Advanced Microgrid Controller. If Seller's independent engineer determines that modifications to the Concentric Power Advanced Microgrid Controller are necessary, Purchaser may provide input for such modifications. Any such modifications shall be undertaken at Seller's sole cost and expense.

10.1.5. Development Security. No later than twenty (20) days after the satisfaction or waiver of the conditions set forth in Section 11, Seller shall deliver to Purchaser security for Seller's obligations under this Agreement ("Development Security"). Development Security may be provided in any one or more of the following forms (as determined by Seller): (i) one or more letters of credit issued by Qualified Issuers; (ii) a guaranty from a Qualified Guarantor, or (iii) any combination thereof. The total amount of Development Security is based upon the product of \$50/kW and the total expected Installed Capacity [and shall equal \$[\_\_\_\_\_] dollars (\$[\_\_\_\_])]. Seller shall maintain the Development Security until Seller delivers the first Deliverability Notice, at which time Purchaser is required to return a portion of any remaining Development Security in an amount proportionate to the quantity of Contracted Energy specified in the first Deliverability Notice compared to Contracted Capacity. Upon receipt of the Final Completion Notice, Purchaser is required to return any remaining Development Security. Purchaser may draw on the Development Security at any time following Seller's event of default for failure to provide any payment or damages due to Purchaser under this Agreement and any applicable cure periods as set forth in Section 6.

## 10.2. Permits.

10.2.1. Seller shall be responsible at its sole cost and expense for obtaining and maintaining in full force and effect throughout the Term of this Agreement, all necessary Permits required for the installation and operation of the System. Purchaser shall assist Seller in obtaining all such Permits as reasonably requested by Seller, at Seller's sole cost and expense.

10.2.2. In the event that any Permits must be entered into by, or issued to, Purchaser, but performed wholly or in part by Seller ("Purchaser Permits"), then Purchaser shall use commercially reasonable efforts, with Seller's assistance, to obtain all such Purchaser Permits at Seller's cost prior to the first Deliverability Notice and to maintain in full force and effect at Seller's cost all such Purchaser Permits throughout the Term of this Agreement, subject to Purchaser's approval, which shall not be unreasonably conditioned, withheld or delayed.

## 10.3. Ramping Production; Deliverability Notices; Dispatch Protocol.

10.3.1. When Seller reasonably concludes that the System is capable of delivering Contracted Energy to Purchaser, Seller shall send Purchaser a written notice stating (a) the amount of Contracted Energy capable of being delivered and (b) the date, no fewer than seven (7) days and no greater than ten (10) days from the date of the notice, on which the Contracted Energy shall be ready for delivery ("Deliverability Notice"). Purchaser acknowledges that Contracted Energy may become salable and deliverable in phases, but Seller and Purchaser agree that the initial amount of Contracted Energy for which Seller may issue a Deliverability Notice will equal or exceed 1.25 MW. Subsequently, Seller may send as many Deliverability Notices as needed to supply Contracted Energy sufficient to fulfill all of GMEU's obligations to provide energy to end-users in the Microgrid Program Area. When all of the Contracted Capacity is installed and capable of delivery to the Delivery Point(s), Seller shall send Purchaser a Final Completion Notice.

10.3.2. The Parties shall coordinate the dates upon which Contracted Energy will be available and the dates upon which GMEU's end-users will begin to accept service. As long as the aggregate load of GMEU's end-users in the Microgrid Program Area remains within the range of deliverability designated in Seller's Deliverability Notice, Seller shall ensure that the quantity of Contracted Energy specified in any Deliverability Notice shall match the aggregate load of GMEU's end-users.

10.3.3. The Parties shall adhere to a communications and dispatch protocol to be negotiated and executed by and among Seller, Purchaser, and GMEU, pertaining to the flow of information regarding loads, deliveries of Contracted Energy, System planned outages and maintenance, emergencies, and other information necessary or useful for the ramping of production set forth above, the operation of the System, Seller's ability to meet load obligations, and GMEU's operation of its Distribution Facilities ("Dispatch Protocol").

## 10.4. Site Property Rights.

10.4.1. Seller shall obtain all real property rights necessary to construct, install, and operate the System at the Site(s).

## 10.5. Milestones and Milestone Dates.

10.5.1. Appendix D sets out a schedule of the milestones for the development of the System (each milestone, a “Milestone”) and the Milestone Dates associated therewith. Seller shall use commercially reasonable efforts to achieve each Milestone. Until the Final Completion Notice has been sent, Seller shall, within fifteen (15) days after the close of each month following the Effective Date, provide Purchaser with a progress report in the form provided in Appendix D, setting forth the status of each Milestone, any issues that have arisen with respect to the timely achievement of such Milestone, and any change to any Milestone Date.

10.5.2. If Seller reasonably believes that no portion of the Contracted Energy will be ready for delivery on or before the Expected Deliverability Date despite Seller’s commercially reasonable efforts to meet that date, Seller shall, no fewer than fourteen (14) days prior to the Expected Deliverability Date, notify Purchaser of such belief and specify a later date. Failure of the System to be capable of delivering any of the Contracted Energy on or before the Expected Deliverability Date, as updated from time to time, shall not give rise to a right of either Party to terminate this Agreement, or to seek other remedies or damages hereunder, provided, however, that Purchaser may terminate this Agreement without liability if no Contracted Energy is deliverable by January 1, 2023, which date may be extended on a day for day basis if Final CEQA Approval has not occurred within two hundred seventy (270) days following the Effective Date.

## 10.6. CEC Certification and EPS Compliance.

10.6.1. CEC Certification. No later than \_\_\_ (\_\_) days after the Effective Date, Seller shall deliver to Purchaser a copy of the application in the name of Seller (or an Affiliate of Seller) that has been filed with the CEC for the pre-certification of the System as comprising eligible renewable energy resources in accordance with the Public Utilities Code Section 399.12(e) and the applicable guidelines adopted by the CEC.

Following the initial Delivery Notice, Seller shall promptly file with the CEC all materials and documents required for the System to be CEC Certified in conformance with the CEC Guidebook for Renewables Portfolio Standard Eligibility, as amended from time to time. Seller shall promptly provide Purchaser with copies of all material submittals to the CEC and other correspondence between Seller and the CEC, including any correspondence evidencing that the System has been CEC Certified. Seller shall ensure that the System remains CEC Certified through the Term of this Agreement.

### 10.6.2. **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** EPS Compliance.

The Generating Facilities are baseload generation subject to greenhouse gases emission performance standards set forth under regulations issued by the California Energy Commission. Accordingly, Seller warrants and guarantees that, throughout the Term, the Generating Facilities shall be EPS Compliant. From time to time and at any time requested by Purchaser, Seller will furnish to Purchaser, Governmental Authorities, or other Persons designated by any Purchaser, all certificates and other documentation reasonably requested by Purchaser in order to demonstrate that the Generating Facilities were or are EPS Compliant. If the California Energy Commission promulgates more stringent standards during the term of this Agreement that materially increase the costs of Seller’s generation of energy necessary to meet its load obligations hereunder, the Parties shall meet and confer in good faith to address such costs. The Parties agree that the costs that Seller shall be required to bear to address incremental new costs resulting from such more stringent standards shall be capped at \$\_\_\_\_\_ in any given Contract Year. If the incremental costs exceed that cap, the Parties shall, if necessary, negotiate in good faith adjustments to the Energy Service Charge to cover such excess costs of compliance.

## 10.7. Interconnection of the System.

10.7.1. Purchaser expressly acknowledges that as of the date of execution of this Agreement, no interconnection agreement has been applied for or executed and that interconnection of the System with the distribution system of the Electric Distribution Utility or the CAISO controlled grid may never be established. Seller makes no representation or warranty regarding whether the System will be interconnected or the timing of any potential interconnection of the System.

10.7.2. Notwithstanding Section 10.7.1 above, promptly after the Effective Date, Seller shall initiate the necessary applications and filings with the Electric Distribution Utility or CAISO, as applicable, and otherwise take appropriate steps at Seller’s cost to interconnect the System, and Purchaser shall reasonably cooperate with such efforts. Seller shall request Full Capacity Deliverability Status in the interconnection process. As between Purchaser and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status. Seller shall not be obligated to interconnect the System if Seller reasonably deems such interconnection or network upgrades are too costly, too time-intensive or unfinanceable.

## 11. Conditions Precedent.

Each Party’s obligations under this Agreement shall be conditioned upon the following conditions precedent, which are waivable only upon mutual agreement of the Parties:

- a. Seller obtains all necessary land rights (e.g., leases, easements, and rights of way), Permits, and necessary government authorizations;



- b. Purchaser, GMEU, and Seller enter into binding legal agreements for the construction and financing of the Distribution Facilities, as well as the operation and maintenance of such facilities, and Purchaser or the City of Gonzales or a related entity conveys to Seller all necessary land rights (e.g., leases, easements, and rights of way) necessary for construction and operation of Distribution Facilities;
- c. Purchaser, Seller, and GMEU enter into lockbox account agreements and the Security Package required under Section 3;
- d. GMEU enters into binding legal agreements for twenty-year terms with customers in the Microgrid Program Area that meet or exceed the Minimum Load Threshold as set forth in [SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix C;
- e. the Parties agree to a Dispatch Protocol required under Section 10.3.3; and
- f. the Parties agree to a royalty fee agreement in connection with any net profits derived from the sales of Excess Energy, ancillary services, capacity, and other grid services pursuant to Seller's rights set forth in Section 4.4.1.

If conditions precedent (a) - (f) are not met or waived by mutual agreement of the Parties within one hundred eighty (180) days following the Effective Date, either Party may terminate this Agreement without any recourse or payment due to either Party.

## 12. Operations and Maintenance.

12.1. Operation and Maintenance of the System. Seller shall at its sole cost and expense, operate and maintain the System up to and including each Delivery Point(s) in full compliance with all Applicable Law, regulations, Permits, and the provisions of this Agreement, and in compliance with Prudent Industry Practice.

12.2. Operations and Maintenance Agreement. Seller shall enter into an Operations and Maintenance Agreement with a qualified operator that includes, but is not limited to, Standard Operating Procedures, a scheduled maintenance plan, a schedule of planned outages of the System or components thereof, and emergency curtailment and/or demand response procedures. Seller shall provide Purchaser with a copy and review the scope of services of such agreement with Purchaser prior its implementation; thereafter, Seller shall provide Purchaser with a copy of any updates or revisions to the scope of services of such Operations and Maintenance Agreement

12.3. Station Services. Seller shall produce or procure electricity for System Station Services without cost to Purchaser. Seller shall procure water service for the System without cost to Purchaser.

## 13. California Environmental Quality Act.

13.1. CEQA Review. The Parties understand that the approval and permitting of the System shall be subject to compliance with the California Environmental Quality Act, California Public Resources Code section 21000, et seq. ("CEQA"). In this regard, the Lead Agency may conduct an initial study of the System or other appropriate analysis in order to determine the appropriate environmental documents and procedures that may be necessary to comply with CEQA as to the consideration and potential approval of the System. The Parties acknowledge that their respective obligations under this Agreement remain subject to the completion and satisfaction of CEQA requirements, including any requirements that may be ordered by a court of competent jurisdiction as the result of an action challenging the Final CEQA Approval.

13.2. Final CEQA Approval. Review under CEQA shall be deemed complete ("Final CEQA Approval") on the date of posting of a notice of determination or other appropriate notice with respect to the Lead Agency's review of the System under CEQA.

### 13.3. Termination.

13.3.1. If Final CEQA Approval has not occurred within two hundred seventy (270) days following the Effective Date or if any challenge to the Final CEQA Approval has not reached final judgment in the California Superior Court within one (1) year following the Effective Date, then this Agreement may be terminated by either Party by delivery of written notice to the other Party stating that this Agreement is terminated for failure to obtain Final CEQA Approval.

13.3.2. Seller may terminate this Agreement by written notice to Purchaser within thirty (30) days after the Final CEQA Approval, or within thirty (30) days of completion of any subsequent CEQA review ordered by a court of competent jurisdiction as the result of an action challenging the Final CEQA Approval, if Seller, in its sole discretion, determines that construction and operation of the System or an approved alternative to the system is financially imprudent as a result of (1) mitigation measures and/or modifications to the proposed System imposed by Seller as a result of CEQA review, or (2) selection of an alternative to the proposed System as a result of CEQA review.

13.3.3. Neither Party shall have any liability arising out of termination pursuant to Sections 13.3.1 or 13.3.2.

## 14. Performance Guarantees and Liquidated Damages.

14.1. Availability Guarantee. Seller guarantees that the Generating Facilities and the Storage Facilities shall perform according to the applicable availability metrics as set forth in Appendix G1. The liquidated damages (but not a penalty) for failure to achieve the Availability



Guarantee is set forth in Appendix G1. Such liquidated damages shall, at Purchaser's election, be paid to Purchaser within forty-five (45) days of the final day of the applicable calendar year or appear as a credit from Seller to Purchaser on the next monthly Invoice.

14.2. **Production Guarantee.** Seller guarantees that the Solar Facilities shall perform according to the applicable production metrics as set forth in Appendix G2. The penalty for failure to achieve the Solar System Output Guarantee is set forth in Appendix G2. The penalty shall, at Purchaser's election, be paid to Purchaser within forty-five (45) days of the final day of the applicable calendar year or appear as a credit from Seller to Purchaser on the next monthly Invoice.

14.3. The payments set forth in this Section 14 and **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix G are Purchaser's sole and exclusive remedy for Seller's failure to achieve the Availability Guarantee set forth in Appendix G1 and the Solar System Output Guarantee set forth in Appendix G2. The Availability Guaranty and the Solar System Output Guaranty are exclusive and in lieu of all other warranties (including any implied warranties of fitness for a particular purpose and merchantability), whether express, implied or statutory in nature, in connection with the System's performance. The payments pursuant to this Section 14 and **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix G shall not limit Purchaser's right to exercise any right or remedy under this Agreement or at law or in equity for any other Seller breach or default under this Agreement occurring concurrently with, before, or after Seller's failure to achieve the Availability Guarantee set forth in Appendix G1 or the Solar System Output Guarantee set forth in Appendix G2.

15. **Curtailment and Demand Response Programs.** The Parties acknowledge that GMEU may implement curtailment and/or demand response programs for GMEU's users in the Microgrid Program Area and agree that any payments to customers in connection with such programs may be paid for with monies paid by Seller as liquidated damages assessed under Section 14. The Parties may, by mutual subsequent agreement, agree to implement other curtailment and/or demand response programs. Nothing in this Section 15 shall alter the obligations of Purchaser to pay the Energy Service Charge as set forth in Section 5.

16. **Reimbursable Costs.** Seller shall pay Purchaser all of its qualifying costs incurred to date and those it incurs up to the stop date, as set forth in **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix E. Payments shall be according to the terms set forth in **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix E.

### ARTICLE III: GENERAL PROVISIONS

17. **Representations; Warranties; Compliance; Change in Law; Covenants; Indemnification.**

17.1. **Authorization; Enforceability.** Each Party represents and warrants to the other Party as of the Effective Date that: (a) such Party is duly organized, validly existing, and in good standing under the laws of the state of its formation; (b) the execution and delivery by such Party of, and the performance of its obligations under, this Agreement has been duly authorized by all necessary councils, governing boards, corporate, municipal or similar action, does not and will not require any further consent or approval of any other Person, and does not contravene any provision of, or constitute a default under, such Party's organizational documents (including any organic statutes or ordinances), any indenture, mortgage or other material agreement binding on such Party, or any valid order of any court, regulatory agency or other body having authority to which Party is subject; (c) this Agreement constitutes the legal and valid obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or similar laws relating to or affecting creditors' rights generally and general principles of equity, whether such enforceability is considered in a proceeding in equity or at law; and (d) there is no litigation, action, proceeding or investigation pending, or to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein.

Additionally, Purchaser represents, warrants, and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from suit, jurisdiction of court, relief by way of injunction, order for specific performance or recovery of property, attachment of assets or execution or enforcement of any judgment.

17.2. **Compliance.** Each Party covenants to comply with all Applicable Laws. Seller further covenants that during the Term of the Agreement, Seller shall operate and maintain the System consistent with Prudent Industry Practice.

17.3. **Change in Law.** In the event of a Change in Law following the Effective Date that materially and adversely affects Seller's costs of installing or operating the System, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, Seller and Purchaser will meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.

17.4. **Qualifying Facility Filings.** Purchaser covenants that it shall cooperate with Seller, at Seller's sole cost and expense, regarding the filing of any documentation necessary in connection with the qualification, if applicable, of the System as a "Qualifying Facility" for purposes of the Public Utility Regulatory Policies Act of 1978, or as an "Exempt Wholesale Generator" for purposes of the Public Utility Holding

Company Act of 2005, as amended from time to time.

#### 17.5. Indemnification.

17.5.1. **Seller Indemnity:** To the greatest extent permitted under law, Seller shall indemnify, defend and hold harmless the Purchaser, its directors, officers, principals, employees, agents and representatives against and from any claim, demand, lawsuit, or action of any kind, including, without limitation, for injury to or death of persons, and for damage or destruction of property, including, but not limited to, property of Seller, Purchaser, GMEU, GMEU's end-users in the Microgrid Program Area, or any Electric Distribution Utility, or other loss or damage incurred by Purchaser, arising out of: (a) negligent acts or omissions or willful misconduct of the Seller, its directors, officers, principals, employees, agents and representatives; or (b) the breach by Seller of any of its obligations, representations, warranties, or covenants under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Purchaser in defending such claims, demands, lawsuits or actions, including, but not limited to, reasonable attorneys', witness and expert fees, and any other litigation-related expenses. Seller's obligations pursuant to this section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the gross negligence or willful misconduct of Purchaser or its respective directors, officers, principals, employees, agents and representatives. Seller shall pay any cost that may be incurred by the Purchaser in enforcing this indemnity, including reasonable attorneys' fees.

17.5.2. **Purchaser Indemnity.** To the greatest extent permitted under the law, Purchaser shall indemnify, defend, and hold harmless the Seller, its directors, officers, principals, employees, agents and representatives against and from any claim, demand, lawsuit, or action of any kind, including, without limitation, for injury to or death of persons, and for damage or destruction of property, including, but not limited to, property of Seller, Purchaser, GMEU, GMEU's end-users in the Microgrid Program Area, or any Electric Distribution Utility, or other loss or damage incurred by Seller, arising out of the Contracted Energy delivered by Seller under this Agreement at or after the Delivery Point(s). The obligation to indemnify shall extend to and encompass all costs incurred by Seller in defending such claims, demands, lawsuits or actions, including, but not limited to, reasonable attorneys', witness and expert fees, and any other litigation-related expenses. Purchaser's obligations pursuant to this section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Seller, or its respective directors, officers, principals, employees, agents and representatives. Purchaser shall pay any cost that may be incurred by the Seller in enforcing this indemnity, including reasonable attorneys' fees.

17.6. **Insurance:** Seller shall obtain and maintain the insurance coverages listed in Appendix H.

#### 18. Limitation of Liability.

18.1. **EXCLUSIVE REMEDIES.** FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT, AS THE SOLE AND EXCLUSIVE REMEDY FOR SUCH BREACH AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY. THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS TRANSACTION, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS TRANSACTION

18.2. **CUMULATIVE REMEDIES.** IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NON-EXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY; PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED.

18.3. **WAIVER OF CERTAIN DAMAGES.** EXCEPT WITH RESPECT TO INDEMNIFICATION OF THIRD PARTY CLAIMS PURSUANT TO SECTIONS 17.5.1 and 17.5.2, OR AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, BUSINESS INTERRUPTION OR SIMILAR DAMAGES, WHETHER BY STATUTE, IN TORT, BY CONTRACT OR OTHERWISE.

18.4. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

#### 19. Assignment.

19.1. **Assignment.** Neither Party may assign its rights and obligations under this Agreement ("Assigning Party") without the prior written

consent of the other Party (“Non-Assigning Party”), which consent may not be unreasonably withheld, conditioned or delayed provided that the proposed assignee: (a) is, at the time of such assignment, of equal or greater creditworthiness than was the Assigning Party as of the Effective Date, such creditworthiness to be established at the reasonable discretion of Non-Assigning Party; (b) assumes in writing all obligations of the Assigning Party hereunder, to the extent the same continues to survive; (c) where Seller is the assigning Party, the assignee is a Qualified Assignee; and (d) the assigning Party delivers such information as may be reasonably requested by the other Party to confirm that the proposed assignment will not adversely affect the enforceability or tax treatment of the Agreement. No transfer or assignment pursuant to this section shall relieve the Assigning Party of its obligations under this Agreement unless the Non-Assigning Party shall agree in writing in its reasonable discretion.

19.2. Assignment by Seller without Consent. Notwithstanding Section 19.1, Seller may, with prior written notice to Purchaser, assign its rights and obligations under this Agreement in whole or in part and without Purchaser’s consent to: (a) any Affiliate or subsidiary of Seller; (b) to any Person succeeding to all or substantially all of the assets of Seller; and (c) a lender, directly or collaterally in connection with any financing transaction entered into by Seller. Any direct assignment of rights or obligations under this Agreement pursuant to this Section 19.2 shall release Seller from the assigned right or obligation so long as such assigned right or obligation is assumed in writing by the assignee. Any collateral assignment of this Agreement pursuant to this Section 19.2 shall not release Seller from its obligations or liabilities under this Agreement. Purchaser agrees to promptly execute (or cause the appropriate third party to execute, as applicable) any consents, estoppels, subordination and non-disturbance agreements, or other documents related to such financing transaction assignment as may be reasonably required by Purchaser or lender, and Seller shall reimburse or shall cause lender to reimburse, Purchaser for Purchaser’s reasonable costs incurred in the review, preparation, negotiation, execution and/or delivery of any documents requested by Seller or the lender pursuant to this Section 19.2.

19.3. Subcontractors – No Assignment. Seller may engage contractors or subcontractors to provide services or supplies under this Agreement, provided that no such contract or subcontract shall relieve Seller of any of its duties or obligations under this Agreement. Any such contractors or subcontractors shall be suitably qualified, experienced and licensed, as required by law, to perform its obligations under this Agreement.

## 20. Force Majeure.

20.1. Force Majeure. The term “Force Majeure” shall mean a cause or event that (i) delays or prevents a Party from timely performing any material obligation under this Agreement, (ii) is not within the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, and (iii) by the exercise of due diligence and acting in accordance with Prudent Industry Practices the affected party is unable to overcome or avoid. Provided the event meets all of the criteria described above, Force Majeure may include, without limitation: acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, blizzards, volcanic activity, or tornadoes; severe weather; high winds of sufficient strength or duration to materially damage the System or significantly impair its operation for a period of time longer than normally encountered in similar businesses under comparable circumstances; lightning; ice storms; sabotage; vandalism; cyber-attack; terrorism; war; riots; fire; explosion; blockades; insurrection; pandemic; any actions or inactions by any Governmental Authority that prohibit or prevent the transactions contemplated hereby or would cause such transactions to be a violation of law or regulation (in the case of Force Majeure claimed by Purchaser, other than any actions or inactions by the Purchaser in its governmental or regulatory capacity); and condemnation of any portion of the Site by any governmental entity other than any condemnation caused by the Purchaser. Without limiting the generality of the definition of Force Majeure set forth above, in no event shall any of the following constitute a Force Majeure event: (i) to the extent not caused by an event of Force Majeure, Purchaser’s inability to receive, use, resell, or otherwise make economic use of the Contracted Energy in the agreed upon quantity following its delivery to the Delivery Point, (ii) the failure by Seller to obtain Permits or approvals of any type to construct, operate or maintain the System or to construct, operate or maintain the System in accordance with this Agreement, except to the extent such failure was itself caused by an event of Force Majeure; (iii) Purchaser’s economic inability to pay amounts due to Seller, delays in or inability of a Party to obtain financing, or other economic hardship of any kind; (iv) Seller’s ability to sell energy at prices in excess of those provided in this Agreement, or Purchaser’s ability to purchase any energy at prices less than those provided in this Agreement.

20.2. Neither Party shall be considered in breach of this Agreement or be liable to the other for any delay in or failure of performance under this Agreement if and to the extent that such delay or failure is due to a Force Majeure occurrence. A Party claiming relief due to Force Majeure shall (i) notify the other Party in writing within five (5) days of a Force Majeure condition preventing such Party’s performance, (ii) exercise all reasonable efforts to minimize delay or damage caused by such Force Majeure event, (iii) notify the other Party in writing of the cessation or termination of the Force Majeure event, and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

20.3. Limitations on Effect of Force Majeure. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to payment obligations for costs and balances hereunder owing in the ordinary course of business that were incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its

sole discretion, deems appropriate. If Seller elects to replace the affected System following a Force Majeure event that materially damages the System, then, upon commencement of operations of the replacement System, all terms and conditions of this Agreement shall remain in effect, including the remaining Term of this Agreement.

## 21. Legal Effect of Contract.

21.1. **Purchaser Not Operator.** None of Purchaser, any party related to Purchaser, nor anyone claiming by, through or under Purchaser shall have the right or be deemed to own, lease, control, or operate the System for purposes of Section 7701(e) of the Internal Revenue Code or otherwise.

21.2. **Public Dedication.** Any undertaking by one Party to the other Party under any provisions of this Agreement shall not constitute the dedication of the System or any portion thereof to the public or to the other Party or any other Person, and, in any case, any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

21.3. **Burdens/Benefits of System Ownership.** Notwithstanding any provision to the contrary under this Agreement, none of Purchaser, any party related to Purchaser, nor anyone claiming by, through or under Purchaser shall: (a) bear or be deemed to bear (i) any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance by Seller under this Agreement, as the phrase "any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance" is used in Section 7701(e)(1)(D) of the Internal Revenue Code, or (ii) any significant financial burden if there is nonperformance by Seller under this Agreement, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code; (b) receive or be deemed to receive any significant financial benefit if the operating costs of the System are less than the standard of performance and/or operation set forth in this Agreement, as the phrase "significant financial benefit if the operating costs of the System are less than the standards of performance or operation" is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code; or (c) receive or be deemed to receive any significant economic or possessory interest in the System, as the phrase "any significant economic or possessory interest" is used in Section 7701(e)(1)(C) of the Internal Revenue Code. Furthermore, the Parties acknowledge and agree that the total contract price to be paid under this Agreement does not substantially exceed the rental value of the System for the Term within the meaning of Section 7701(e)(1)(F) of the Internal Revenue Code.

21.4. **No Lease; Forward Contract.** The Parties acknowledge and agree that for accounting and tax purposes, this Agreement is not and shall not be construed as a lease and, pursuant to Section 7701(e) of the Internal Revenue Code, this Agreement is and shall be treated by each Party as a service contract for the sale to the Purchaser of the Energy Services. Each of the Parties agrees that it will not dispute that: (a) the transaction contemplated by this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code; and (b) each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

## 22. Dispute Resolution.

22.1. **Informal Resolution.** The Parties shall make a good faith attempt to resolve any and all controversies, claims, disagreements, or disputes between the Parties arising out of or related to the performance of this Agreement, or the alleged breach, termination, or invalidity hereof ("Dispute"). In the event of any Dispute, either Party may give notice to the other Party invoking the provisions and process set forth in this section. Within seven (7) days of the Dispute notice, each Party shall designate a senior officer who is authorized to resolve the Dispute. The designees shall meet in person, telephonically, or otherwise at a mutually agreed time and place no later than fifteen (15) days after notice of the Dispute was initially delivered. Fifteen (15) days after the meeting of senior officers, either Party may then, by notice to the other, submit the Dispute to binding arbitration pursuant to Section 22.2.

22.2. **Arbitration.** Any Dispute not otherwise resolved pursuant to the foregoing meeting of senior officers shall be settled by arbitration in the State of California, in accordance with the rules of the American Arbitration Association and consistent with the limitations on liability contained herein. The venue for any such arbitration shall be Monterey County, California, or other mutually agreeable venue. Each Party to pay its own attorneys' fees and costs.

22.3. In the event the Parties are unable to resolve a dispute arising hereunder through arbitration, either Party may seek any and remedies available to it at law or in equity, subject to the limitations of this Agreement.

## 23. Miscellaneous.

23.1. **Amendments.** This Agreement may be amended only in writing signed by Seller and Purchaser or their respective successors and permitted assigns.

23.2. **Notices.** Any notice required or permitted to be given under this Agreement shall be: (a) mailed by certified mail, postage prepaid, return receipt requested; (b) sent by overnight courier service; (c) personally delivered to the authorized representative of the receiving Party as set forth in this section; or (d) sent by email (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this section). Each Party may change the address or person receiving notice under this agreement through a notice to the other Party. All such notices shall be mailed, sent or delivered, addressed to the Party for whom it is intended, at the address set forth below:



If to Purchaser:

Gonzales Electric Authority  
Attention: Rene Mendez  
147 Fourth Street  
Gonzales, CA 93926  
Phone: (831) 675-5000  
Email: rmendez@ci.gonzales.ca.us

If to Seller:

Bodega Microgrid Generation LLC  
c/o Concentric Power, Inc.  
Attention: Brian Curtis  
150 South Main Street, Suite #130  
Salinas, CA 93901  
Phone: (888) 321-0260  
Email: bcurtis@concentricpower.com

23.3. Non-Waiver. The failure, delay or forbearance by either Party to exercise any of its rights or remedies under this Agreement or to provide written notice of any default to a defaulting Party shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived any right or remedy provided hereunder unless it has made such waiver specifically in writing. The waiver by either Party of any default or breach of any term, condition or provision hereof shall not be deemed to be a waiver of any subsequent breach of the same term, condition or provision, or any other term, condition or provision hereof.

23.4. Severability. Any provision in this Agreement that is or becomes invalid, illegal, or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

23.5. Survival. Any provision of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

23.6. Interpretation. Unless the context of the Agreement otherwise requires: (a) references to articles, sections, paragraphs, clauses, annexes, appendices or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices or exhibits in this Agreement; (b) the headings, subheadings, and table of contents used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect the meaning, construction or effect of any provision thereof; (c) references to any Person (including a Party, whether specifically or generically) shall include such Person (or Party), and its successors and permitted assigns and transferees; (d) reference to any agreement means such agreement as amended, supplemented or otherwise modified from time-to-time in accordance with the applicable provisions thereof; (e) references to any law includes any amendment or modification to such law and any rules or regulations issued thereunder, or any Applicable Law enacted in substitution or replacement thereof; (f) references to "days" shall mean calendar days, unless the term "Business Days" is used; (g) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day; and (h) references to time are references to the time in effect in the Pacific time zone.

23.7. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles). The venue for any dispute arising out of or relating to this Agreement shall be Monterey County, California, unless the Parties otherwise agree.

23.8. Binding Effect. This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

23.9. No Partnership. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

23.10. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a Party hereto.

23.11. Entire Agreement. This instrument and the documents referenced herein represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.



23.12. Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement.

23.13. Further Assurances. Upon the receipt of a written request from a Party, each Party shall execute such additional documents, instruments, estoppels and assurances, and take such additional actions, as are reasonably necessary and desirable to carry out the terms and intent hereof, including, without limitation, in connection with the design, installation, operation, maintenance or financing of the System. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

*[Remainder of page intentionally left blank.]*

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## GLOSSARY OF TERMS

“Affiliate” means, when used with reference to a specified Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the specified Person. As used in this Agreement, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management policies or activities of a Person, whether through ownership or voting securities, by contract or otherwise.

“Agreement” shall have the meaning provided in the Preamble.

“Applicable Law” shall mean any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Assigning Party” shall have the meaning provided in Section 19.1.

“Business Day” means a day other than a Saturday, Sunday or any day banks in San Jose, California are required or permitted to close.

“CAISO” means the California Independent System Operator, or its successor entity.

“CAISO Tariff” means the CAISO Agreement and Tariff, Business Practices Manuals, and Operating Procedures, including the rules, protocols, procedures, and standards attached thereto, as the same may be amended from time-to-time and approved by FERC.

“Capacity” means, (i) with respect to a generating facility, the ability of such facility at any given time to produce energy at a specified rate as measured in MW or kW and any reporting rights thereto, and (ii) with respect to an energy storage facility, the ability of such facility at any given time to charge and discharge energy at a specified rate as measured in MW or kW and any reporting rights thereto.

“Capacity Attributes” means the reportable rights, if any, whether in existence as of the Effective Date or arising thereafter during the Term, that claim or identify Capacity from the System, measured in MWs, for purposes of satisfying long-term Capacity planning requirements, resource adequacy (or for satisfying non-resource adequacy capacity as such phrase is used by the CAISO for identification of Capacity committed to entities outside of the CAISO) or any similar term and/or reserves derived from the System’s Capacity.

“CEC” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, or its successor entity.

“CEC Certified” means that the CEC has certified that the System is an eligible renewable energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC.

“CEQA” shall mean the California Environmental Quality Act, Public Resources Code § 21000, et seq. and its implementing regulations at California Code of Regulations, Title 14, § 15000, et seq.

“Change in Law” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Applicable Law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date, or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority, which is binding on a Party, the System, or any of the products sold from the System.

“Commencement of Installation” means the date that physical installation of the System begins at the Site.

“Concentric” shall have the meaning provided in Recital C.

“Concentric Team” shall have the meaning provided in Recital C.

“Confidential Information” shall have the meaning provided in Section 8.1.

“Contract Year” means the applicable annual calendar year set forth under **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix F, the first year of which shall commence on the Effective Date.

“Contracted Capacity” shall have the meaning provided in Section 1.1.

“Contracted Energy” shall have the meaning provided in Section 4.1.1.a.

“Deliverability Notice(s)” shall have the meaning provided in Section 1.1.

“Delivery Point(s)” shall mean the physical connection points for delivery of Contracted Energy as provided in **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix A.

“Development Security” shall have the meaning provided in Section 10.1.5.

“Dispatch Protocol” shall have the meaning provided in Section 10.3.3.

“Dispute” shall have the meaning provided in Section 22.1.

“Distribution Facilities” means the distribution facilities necessary to transmit and deliver electricity from the Delivery Point(s) to end-users in the Microgrid Program Area.

“Due Date” shall have the meaning provided in Section 5.4.1.

“Early Termination” shall have the meaning provided in Section 6.2.

“Effective Date” shall have the meaning provided in the Preamble.

“Electric Distribution Utility” shall mean Pacific Gas and Electric Company, or its successor entity.

“Energy Service Charge” shall have the meaning set forth in Section 5.1.1.

“Energy Service Rate” shall have the meaning set forth in Section 5.1.2.

“Energy Services” shall have the meaning provided in Section 4.1.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the System, and its displacement of conventional energy generation, that are in effect as of the Effective Date or may come into effect in the future. Environmental Attributes include but are not limited to Renewable Energy Credits or Certificates, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions. “Environmental Attributes” do not include: (i) any energy, capacity, reliability or other power attributes of or derived from the System; (ii) Environmental Financial Incentives; (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the System for compliance with local, state or federal operating and/or air quality Permits.

“Environmental Financial Incentives” means any of the following financial rebates and incentives that are in effect as of the Effective Date or that may come into effect in the future: (a) production, energy, or investment tax credits associated with the development, installation, ownership or operation of the System, accelerated depreciation, and other financial incentives in the form of credits, reductions or allowances associated with the System; and (b) all other credits or rebates, howsoever entitled or named, whether arising under federal, state or local law, international treaty, or the like, arising from or relating to the System (or any component thereof) or otherwise from the development, installation or ownership of the System or the production or sale of the output of the System (or any component thereof). Without limiting the foregoing, “Environmental Financial Incentives” includes the right to claim federal income tax credits under Sections 45 or 48 of the Internal Revenue Code or any state tax law or income tax deductions with respect to the System under the Internal Revenue Code or any state tax law. “Environmental Financial Incentives” do not include Environmental Attributes.

“EPS Compliance” or “EPS Compliant” when used with respect to the Generating Facilities, means that the Generating Facilities comply with EPS Law and satisfy the CEC Performance Standard in effect at the time.

“EPS Law” means Sections 8340 and 8341 of the California Public Utilities Code.

“Expected Deliverability Date” shall be the date set forth in Appendix D as updated from to time as permitted in Section 10.5.2.

“Excess Energy” shall have the meaning set forth in Section 4.4.1.

“FERC” means the Federal Energy Regulatory Commission, or its successor entity.

“Final CEQA Approval” shall have the meaning set forth in Section 13.2.

“Final Completion Notice” means the notice provided by Seller to Purchaser upon the installation and capability of delivery of all Contracted Capacity.

“Final Deliverability Notice” is Seller’s last Deliverability Notice, which shall notify Purchaser of the date, no fewer than seven (7) and no later than ten (10) days from the date of notice, on which the System will be able to deliver its full Contracted Capacity.

“Fixed Rate” shall have the meaning set forth in [SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix C.

“Force Majeure” shall have the meaning provided in Section 20.1.

“Fuel Rate” shall have the meaning set forth in [SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix C.

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.

“Generating Facilities” means the 10 MW firm energy generation assets to be located at \_\_\_\_\_, as more fully described in [SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix A.

“GMEU” means an enterprise of the City of Gonzales authorized to provide electric service to retail customers located in the City of Gonzales. Purchaser is responsible for the operation and maintenance of GMEU.

“Governmental Authority” means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority. The term “Governmental Authority” shall not include Purchaser.

“Indemnified Party” shall have the meaning provided in Section 17.5.

“Indemnifying Party” shall mean that Party providing indemnification to an Indemnified Party under the terms in Section 17.5.

“Initial Term” shall have the meaning provided in Section 3.1.

“Internal Revenue Code” shall mean the Internal Revenue Code of 1986, as amended.

“Invoice” shall have the meaning provided in Section 5.4.1 and includes any invoice, bill or statement that describes current charges due.

“Lead Agency” means the public agency which has the principal responsibility for carrying out or approving a project under CEQA; see California Code of Regulations, title 14, section 15367.

“Lockbox Account” shall have the meaning provided in Section 5.5.1.

“Meter(s)” shall have the meaning provided in Section 5.3.1.

“Meter Data” shall have the meaning provided in Section 5.3.2.

“Microgrid Program Area” shall have the meaning provided in Recital B.

“Milestone” shall have the meaning provided in Section 10.5.1.

“Minimum Purchase Quantity” shall be the minimum quantity of kWh purchased by Purchaser as set forth in **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix C.

“Non-Assigning Party” shall have the meaning provided in Section 19.1.

“Non-Fuel Variable Rate” shall have the meaning set forth in **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix C.

“Party” and “Parties” shall have the meaning provided in the Preamble.

“Permits” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation or maintenance of the System, the production and delivery to the Delivery Point(s) of Contracted Capacity, Environmental Attributes, Capacity, and Capacity Attributes, or any other transactions or matter contemplated by this Agreement,

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

“Prudent Industry Practice” shall mean the practices, methods, and acts that are commonly engaged in or approved by a significant portion of the solar power generation (including battery facilities) industry and the electric and thermal cogeneration power generation industry in the Western United States under prudent engineering and operations to design, construct, operate, and maintain electric equipment lawfully and with safety, reliability, dependability, efficiency, and economy. Prudent Industry Practice is not intended to be limited to the optimum practices, methods or acts, to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts, generally accepted in the Western United States and consistently adhered to by Seller.

“Purchaser” shall have the meaning provided in the Preamble.

“Purchaser Permits” shall have the meaning provided in Section 10.2.2.

“Purchaser’s Check Meters” shall have the meaning provided in Section 5.3.4.

“Qualified Assignee” means a person for whom Seller has provided to Purchaser reasonable proof that such person: (i) has, or contracts with an entity that has, comparable experience in operating and maintaining solar panel systems, storage units and electric generating facilities comparable to the System and providing services comparable to those provided by Seller to this Agreement; and (ii) has the financial capability to maintain the System and perform the services provided by Seller pursuant to this Agreement in the manner required by this Agreement.

“Qualified Guarantor” means a guarantor with a rating meeting at least two (2) of the following (a) BBB1 or higher by Fitch Ratings Ltd.; (b) BBB- or higher by Standard & Poor’s; or (c) Baa3 or higher by Moody’s Investors Services, Inc.

“Qualified Issuer” means a Person that maintains a domestic branch office in the continental United States, that is acceptable to Purchaser in its sole discretion, and (a) maintains a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) A3 or higher by Moody’s Investment Service, Inc., or (ii) A- or higher by Standard & Poor’s, and has not suffered a downgrade event.

“Qualifying Facility” shall have the meaning as defined in the FERC regulations (codified at 18 CFR Part 292 in effect on the Effective Date).

“Renewable Energy Credits”, “Renewable Energy Certificates” or “RECs” shall mean renewable energy certificates related to and representing Environmental Attributes (also known as green tags, renewable energy credits or tradable renewable certificates), which are tradable environmental commodities in the United States and represent one (1) megawatt-hour (MWh) of electricity generated from an eligible renewable energy resource.

“Renewal Term” shall have the meaning provided in Section 3.2.

“Request for Interest” shall have the meaning provided in Recital B.

“Security Package” shall have the meaning provided in Section 5.5.4.

“Seller” shall have the meaning provided in the Preamble.

“Site” shall have the meaning given in Recital F.

“Solar Facilities” means the 14.5 MW<sub>ac</sub> solar energy generation assets to be located at \_\_\_\_\_, as more fully described in **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix A.

“Standard Operating Procedures” shall mean a set of procedures for the operation and maintenance of the System agreed upon by the Parties following the Effective Date of this Agreement.

“Station Services” shall mean the energy produced or discharged by the System that is used within the System to power the lights, motors, control systems and other electrical loads that are necessary for the operation of the System.

“Storage Facilities” means the 10 MW/27.5 MWh battery energy storage facilities to be located at \_\_\_\_\_, as more fully described in **[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS]** Appendix A.

“System” shall have the meaning provided in Recital F.

“Term” shall have the meaning provided in Section 3.2.

“Termination Fee” shall have the meaning provided in [SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix E.

“Utility Charges” shall means any charge imposed or collected by

the Electric Distribution Utility related to the delivery or sale of the Contracted Energy by Seller to Purchaser.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

## INDEX OF APPENDICES

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Appendix F: Early Termination Fee Schedule

Appendix G: Seller Performance Guarantees

Appendix H: Insurance Requirements

Appendix I: Asset Purchase Agreement

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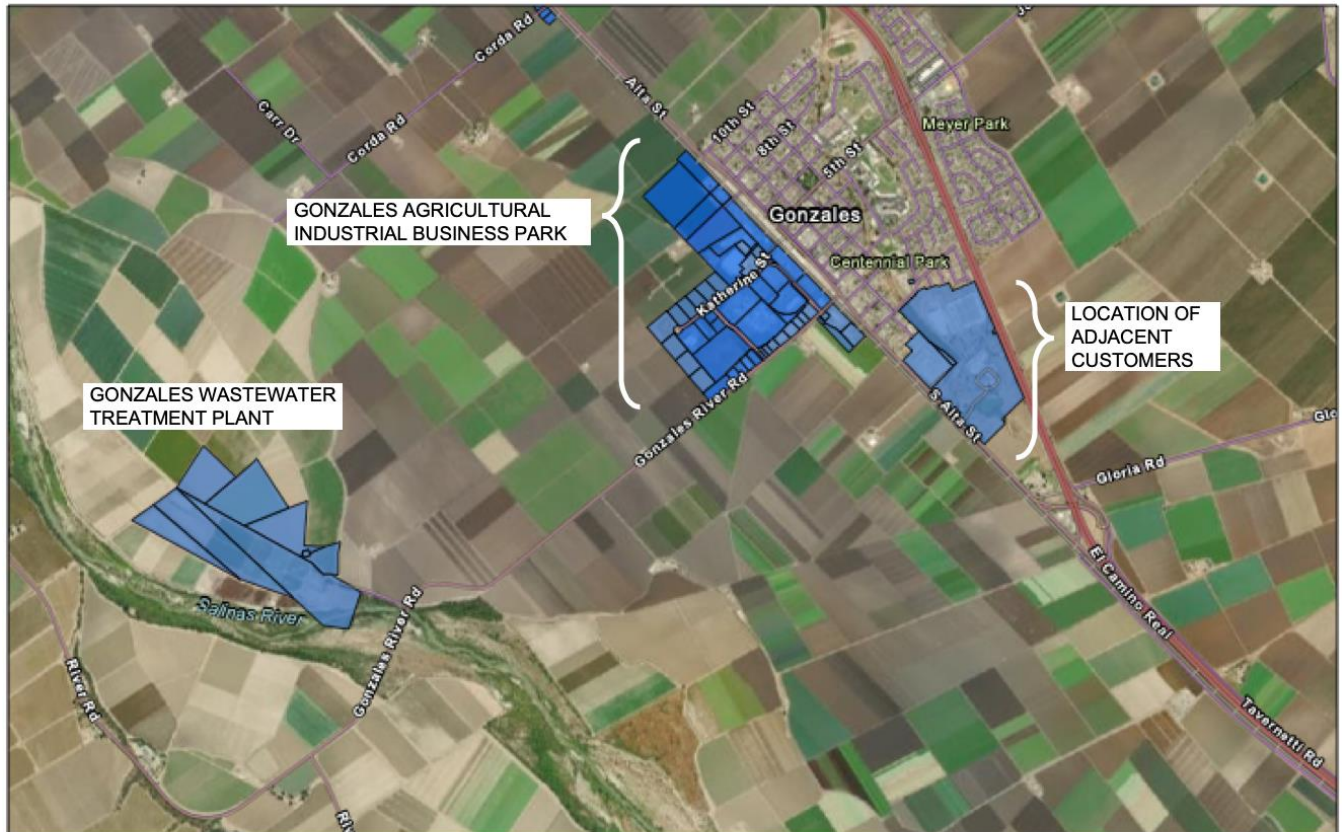


**[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix A: Microgrid Program Area, Site and Delivery Point**

**A1. Location.**

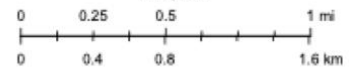
The Microgrid Program Area includes the Gonzales Agricultural Industrial Business Park and the surrounding vicinity as shown in Figure A-1 below. The Gonzales Agricultural Industrial Business Park is an agriculture-oriented business industrial park, comprised of 70± acres, including fully improved lots, streets and infrastructure; designated in City of Gonzales records. Potential end-users in the Microgrid Program Area include agricultural industrial companies with food/beverage processing and refrigeration facilities.

**Figure A-1 Microgrid Program Area**



June 15, 2020

1:36,112



Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap

A. Site Locations:

- i. Power House / Generating Facilities / Substation / Battery Energy Storage Systems – expected to be located at property currently known as 162 Bodega, Gonzales, CA
- ii. Solar Facilities – co-located with existing and future Gonzales Wastewater Treatment Plant [GEA to provide parcel detail]
- iii. Control Center – property currently known as 122 and 142 Bodega, Gonzales, CA
- iv. Solar to Substation Gen-tie Line – primarily in City of Gonzales Right of Way
- v. Transmission Interconnection Line – primarily in City of Gonzales Right of Way

B. Legal Description:

- i. Power House / Generating Facilities / Substation / Battery Energy Storage Systems - Lot 6, as shown on that certain map of “Tract No. 1455 Vista de Santa Lucia” according to the map recorded December 22, 2005 in Volume 23 of Maps, “Cities and Town”, at Page 19, Monterey County Records.
- ii. Solar Facilities – [GEA to provide parcel detail]
- iii. Solar to Substation Gen-tie Line – primarily within rights of way owned or leased by the City of Gonzales
- iv. Delivery Point – the point at which the System is interconnected to GMEU’s Distribution Facilities
- v. Transmission Interconnection Point – anticipated CAISO interconnection point [subject to change]
- vi. Transmission Interconnection Line – primarily within rights of way owned or leased by the City of Gonzales

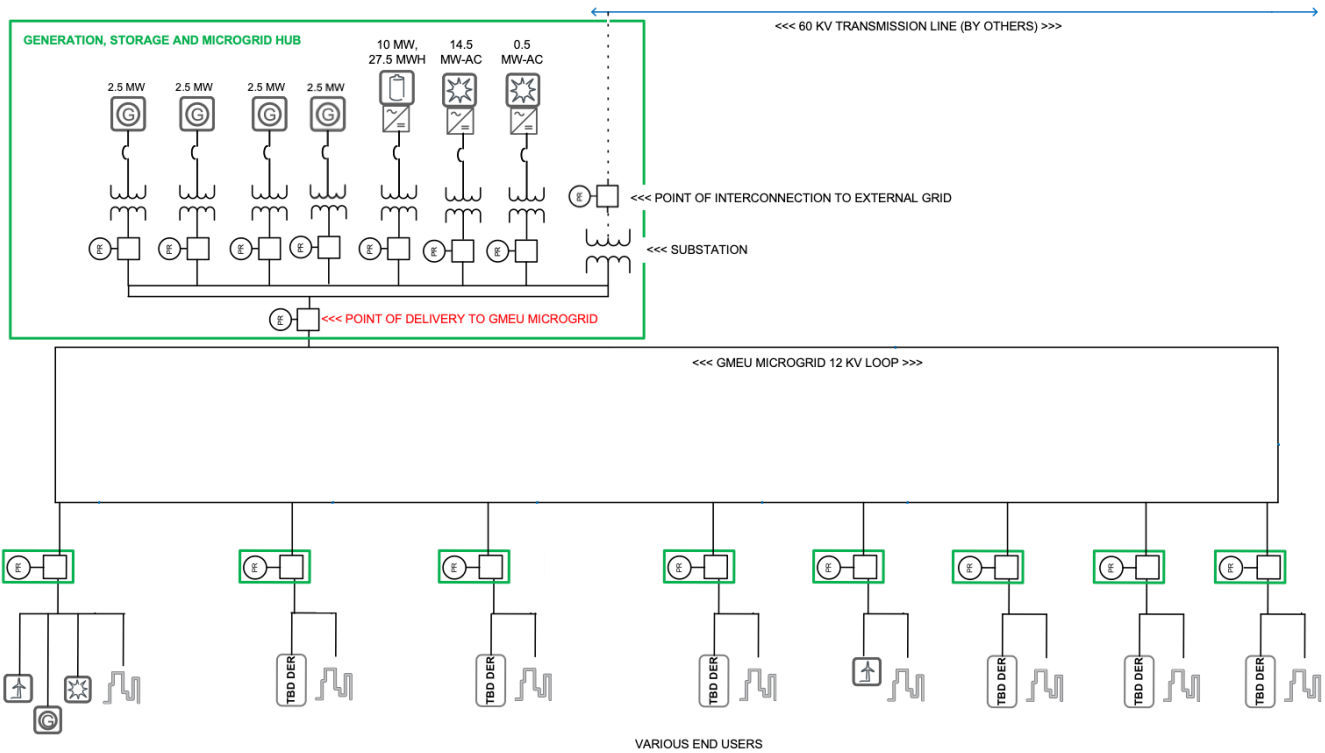
C. Map:

Figure A-2. Site Maps

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A2. Delivery Point

[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Figure A-3. – Single Line Diagram with Delivery Point



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**[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix B: System Description**

**B1. System Description.**

The System is comprised of five primary types of assets: solar generation, battery energy storage systems, natural gas firm power generators, a substation, and transmission lines. Overall the total nameplate capacity of the System [47.5 MW], but the System will be designed to be capable of providing 20 MW of electric power on continuous basis throughout the year. The natural gas generators and portions of the battery energy storage system will be housed in a single location described as the "Powerhouse," which may also house switchgear and other electrical and mechanical equipment.

**B2. Solar Generation.**

The System will include installation of approximately 14.5 MW of solar generation at the solar field. Mounting will be a combination of ground mount, raised carport style structures, and potentially, floating mount, solar panels. The installation will occur on land owned by the City of Gonzales or entity related to the City of Gonzales co-located with the City's wastewater percolation ponds on Gonzales River Road west of the City. An additional space within the boundary of the City's wastewater treatment plant is approximately 2000 feet long with a width that runs from approximately 50 to 130 feet and may be to accommodate as much as 5 MW of solar. Additional solar may be incorporated on other City property as mutually agreed by the Parties. The solar field will connect to the substation via a transmission line; see Appendix B6, below.

**B3. Battery Energy Storage.**

The battery energy storage system will be comprised of two types of batteries, flow and lithium ion, that together will have a capacity of 10 MW / 27.5 MWh. It will be located in the Powerhouse, adjacent to the natural gas generators.

**B4. Natural Gas Generation.**

Natural gas generators will be comprised of four 2.5 MW natural gas engines (the engines will be capable of also running on landfill and other renewable gas). Engine selection is on-going. Air emissions will be controlled through selective catalytic reduction (SCR) installed on each engine. The SCR reduces NOx and CO emissions from the engines to levels acceptable to the Monterey County Air Resources Board. Aqueous ammonia (ammonium hydroxide at 19 percent (19%) nominal concentration by weight) will be used to reduce NOx concentrations. Ammonia will continuously be delivered to the site by truck and stored at the new aqueous ammonia storage and transferring system. The engine facilities will also include cooling tower(s) and engine stacks up to 25 feet high.

**B5. Substation.**

An electric open-air substation will be built as part of the microgrid system. The substation is estimated to be 15,000 square feet. Components of the substation include switch gear, transformers, circuit breakers, air switches, buses, and other standard components. All generation sources will connect to the substation.

**B6. Solar to Substation Gen-tie Line.**

As part of the microgrid, electric power generated by the Solar Facilities will be transmitted from the solar generation stations to the Substation via a generation tie line approximately 2 miles long. At present, two mounting options are being considered: 1) overhead lines via Gonzales River Road to [Bodega] or 2) underground lines via Gonzales River Road to Bodega. The expected voltage of this line is 35 kV.

**B7. Transmission Interconnection**

It is anticipated that the System will interconnect to the CAISO or PG&E grid at a proposed interconnection point on land owned by the City of Gonzales that is adjacent to Microgrid Program Area. This will require the installation of high voltage power lines and interconnection facilities. The path of the power lines has not been finalized, nor has it been determined whether or not any segment of these lines would be undergrounded. The expected voltage of these lines is 60 kV.

The land necessary for the transmission lines is expected to be within existing City of Gonzales right of way.



**[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix C: Energy Service Charge**

C1. The Minimum Purchase Quantity shall be [24,500,000 – 28,000,000] kWh per year.

C2. The Minimum Load Threshold shall be 19 MW per year.

**C3. Energy Service Rate**

- A. As set forth in Section 5.1.2, the Energy Service Rate shall be the sum of the Fixed Rate, the Non-Fuel Variable Rate, and the Fuel Rate. Starting rates with adjustment indices are provided in Figure C3-1.
  - i. The Fixed Rate shall be [\$0.0975 to \$0.1125]/kWh.
  - ii. The Non-Fuel Variable Rate shall be \$0.0052, and is subject to adjustment as set forth in Appendix C4.C.
  - iii. The Fuel Rate shall be calculated is comprised of the following subcomponents and make up the total delivered fuel cost:
    - (a) Henry Hub NYMEX average forward for 12 months published by [Natural Gas Intelligence, Platts or CME]
    - (b) Basis average forward 12 months published by [Natural Gas Intelligence or Platts] or supplied by a mutually agreed upon third party such as a top tier gas marketer
    - (c) PG&E Transport costs

The Fuel Rate is calculated based on the manufacturer’s nameplate simple cycle HHV heat rate for the natural gas generator sets of 8992 btu/kWh multiplied by the fuel component cost measured in US\$/mmbtu-HHV to arrive at fuel variable components measured in \$/kWh to four decimal places. Where market indices or tariffs are denoted in alternative units, including but not limited to PG&E transportation rates listed in terms and engine efficiency ratings listed in LHV, such units shall be converted to the units provided herein.

Figure C3-1. Starting Energy Service Rate

	Starting		Escalation	
	\$/kWh		% or index	Notes
Fixed Rate Component	\$0.0975	\$0.1125	[1.00% - 1.50%]	Calculation based on prev. year
Non-Fuel Variable Component	\$0.0052	\$0.0052	PPI	Producer Price Index
Fuel Variable Component				
HH NYMEX	\$0.0037	\$0.0037	Market	Blended 12-mo forward contracts
Basis	\$0.0011	\$0.0011	Market	Blended 12-mo forward contracts
PG&E Transport	\$0.0025	\$0.0025	PG&E	As of Jan 1 with true up for prev. year
Energy Service Rate	\$0.1100	\$0.1250	Blended	

**C4. Rate Adjustment**

- A. The Energy Service Rate shall escalate [2.0%] on January 1, 2021.
- B. The Fixed Rate shall adjust at zero percent [1.0 to 1.5%] on January 1 of each year, commencing on January 1, 2022.
- C. The Non-Fuel Variable Rate shall escalate on January 1 of each year, commencing on January 1, 2022, at the rate established by the United States Bureau of Labor Statistics in the Producer Price Index for final demand, 12-month percent change, not seasonally adjusted for Goods less food and energy, currently available at <https://www.bls.gov/charts/producer-price-index/final-demand-12-month-percent-change.htm>.
- D. Consistent with Appendix C3.A.iii, the Fuel Rate shall adjust annually on January 1 of each year, commencing on January 1, 2022. Calculated as follows:
  - i. HH NYMEX component adjustment shall be calculated based on the weighted average futures price for Henry Hub NYMEX Natural Gas for January through December of the coming year as of December 1 of the previous year taking into account the forecasted monthly volume. This average will be compared to the average from the previous year to determine the % escalator for the Fuel Variable Component for the gas commodity.
  - ii. Basis component adjustment will be calculated using the same methodology as for HH NYMEX.

- iii. PG&E Transport component will be calculated based on the utility rate as of January 1 of the given year compared to January 1 of the previous year. In the case where utility rates adjustments were made throughout the previous year, a true up adjustment will apply based on actual monthly volumes for the previous year and forecasted monthly volume for the current year.
- E. Energy Service Rate Adjustment. Any annual increase in the Energy Service Rate resulting from the rate adjustments described herein shall not be below a floor of [0.0%] and or above a ceiling of [3.0%]. If the calculations in this appendix provide a result above or below this range, the applied escalation shall be the floor or ceiling rates, respectively.

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Appendix D: Milestone Schedule and Progress Reporting Form

Milestone	Expected Completion Date
Evidence of Site Control	Effective Date + 60 days
Permit Documentation	Effective Date + 60 days Effective Date + 90 days
Land Use Permit	
Air Permit	
Financial Close	Effective Date + 120 days
Commencement of Installation	Effective Date + 270 days
Expected Deliverability Date	Effective Date + 360 days
Final Completion Notice	Effective Date + 450 days

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## Progress Reporting Form

Each monthly progress report must include the following items:

1. Executive Summary.
2. System description.
3. Site plan for the System.
4. Description of any planned changes to the System or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar month.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description regarding the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that could potentially affect Seller meeting Milestones.
10. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements, and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
11. Pictures to document construction and startup progress of the System.

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**[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix E: Reimbursable Costs**

Seller shall reimburse Purchaser's actual expenses on an open book basis, provided such reimbursement shall not exceed 5% of total capital cost of the System or \$3.5 million, whichever is greater.

**E1. Qualifying Costs**

- i. Consultants
  - 1. ZeroCity, LLC
    - 1.A.i.1.1. Seller agrees to remit payment to Purchaser to reimburse Purchaser for all expenses incurred by the City of Gonzales and Purchaser pursuant to the consulting services agreement entered into by ZeroCity LLC and the City of Gonzales on October 16, 2017 relating to the development of assets to provide electric power to customers in and around the Gonzales Agricultural Industrial Business Park. For the purpose of determining the dollar amount of the payment to be remitted by Seller to Purchaser, reimbursable expenses shall be calculated as follows:
    - 1.A.i.1.2. Expenses shall consist of three percent (3%) of Total Project Cost. "Total Project Cost" shall mean the total dollar expense incurred through the year 2030 by Seller, and any third parties representing or serving the Seller, to design, develop, construct, and commission any and all assets required to generate, store, transmit, and control: 1) electric power for delivery to any and all customers of GMEU located in the Microgrid Program Area; and 2) electric power exported to the PG&E or CAISO controlled power grid.
  - 2. NHA Financial Advisors
  - 3. California Strategies
- ii. Legal
  - 1. Day, Carter, Murphy
  - 2. Norton Rose Fulbright
- iii. Costs associated with RFI and subsequent negotiations
- iv. Other costs associated with establishment of GEA/GMEU

**E2. Dates:**

- A. Start Date: June 1, 2020  
End Date: Final Deliverability Notice

**E3. Payment Schedule**

i. Paid upon Financial Close	\$2,100,000.00
ii. Quarterly Payment 1	\$350,000.00
iii. Quarterly Payment 2	\$350,000.00
iv. Quarterly Payment 3	\$350,000.00
Paid upon Final Completion Notice	\$True-up amount based on actual audited costs

E4. Nothing in this Agreement defines or prevents cost reimbursements for future phases or projects within the GMEU service territory.

E5. No later than 30 days prior to any payment of reimbursable expenses, Purchaser shall provide invoices and other documents necessary to prove Purchaser's actual expenses listed above. Under no circumstances will Seller be required to reimburse expenses not actually incurred by Purchaser, documented adequately, or in violation of Applicable Law.



**[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix F: Early Termination Fee Schedule**

F1. The Termination Fee

- A. The Termination Fee for Years 7 – 30 shall be the termination value in Table F-1 and is estimated to account for lost revenue, all costs incurred by Seller in terminating operations under the agreement, any losses incurred or disallowed by the Internal Revenue Service from early termination, and any costs related to terminating this Agreement, including Administrative and legal costs.
- B. Table F-1

Contract Year	Amount
7	\$64,668,757
8	\$64,273,212
9	\$63,771,420
10	\$63,155,357
11	\$62,416,483
12	\$61,545,713
13	\$60,533,382
14	\$59,369,209
15	\$58,042,263
16	\$56,540,917
17	\$54,852,813
18	\$52,964,812
19	\$50,862,948
20	\$48,532,376
21	\$45,957,323
22	\$43,121,027
23	\$40,005,679
24	\$36,592,357
25	\$32,860,963
26	\$27,540,147
27	\$23,107,232
28	\$18,288,136
29	\$12,432,283
30	\$6,137,517

- i. The termination value reflected in Table F-1 is established as if termination occurred as of January 1 of the indicated year. Termination made at a later date shall be prorated.

**[SUBJECT TO FURTHER NEGOTIATION AND REVISIONS] Appendix G: Seller Performance Guarantees**

**G1. Availability Guarantee:**

Subject to the provisions of Appendix G3 below, Seller guarantees that the dispatchable portions of System (natural gas-power engine portion of the Generating Facilities and Storage Facilities) will maintain an annual availability of [ninety-nine percent (99.00%)] (the “Availability Guarantee”), calculated as follows: within thirty (30) day following the final day of each calendar year, availability will be determined by dividing (i) the number of hours in which the System was delivering or capable of delivering a minimum of [15] MW<sub>AC</sub> of electricity (“Minimum Production Level”) to Purchaser in such year (“Operating Hours”), by (ii) the value of (A) eight thousand seven hundred and sixty (8,760) less (B) the number of hours during such year during which the System was subject to an exclusion set forth in Appendix G3 below. In the event that the result of such calculation is less than ninety-nine percent (99.00%), Seller shall make a payment or provide a credit in the form of liquidated damages (but not a penalty) (“Availability Guarantee Deficit Payment”) to Purchaser equal to (x) [one hundred dollars (\$100.00)], multiplied by (y) the difference between (A) the number of Operating Hours in the applicable year that would have resulted in [ninety-nine percent (99.00%)] availability pursuant to the formula set forth above, minus (B) the actual Operating Hours achieved in such year; multiplied by (z) Purchaser’s average load during the hours in which System failed to meet the Minimum Production Level up to, but not exceeding, the Minimum Production Level. Seller will, at Purchaser’s election, remit such Availability Guaranty Deficit Payment to Purchaser within 45 days of the final day of the applicable calendar year or provide a credit to Purchaser on the next monthly invoice.

**G2. Production Guarantee:**

Output Guarantee. Subject to the provisions of Appendix G3 below, Seller guarantees that the solar portion of the Generating Facilities will generate electricity at not less than eighty percent (80.00%) of the System’s solar installed Capacity during each Contract Year (the “Solar System Output Guarantee”), calculated as follows: within thirty (30) day following the final day of each Contract Year, Seller will determine if the System complied with the Solar System Output Guarantee by *dividing* (i) the kWh produced by the solar generation components of System in such year, *by* (ii) the value of (A) Guaranteed Yearly Solar System Output Amount for such Contract Year set forth in the table below *less* (B) the number of hours during such year during which the System was subject to an exclusion set forth in Appendix G3 below. In the event that the result of such calculation is less than eighty percent (80.00%), Seller shall make a payment or provide a credit (“Solar System Output Guarantee Deficit Payment”) to Purchaser equal to (x) [ten dollar (\$10.00)], multiplied by (y) the difference between (A) the number of MWh in the applicable year that would have resulted in eighty percent (80.00%) output pursuant to the formula set forth above, minus (B) the actual MWh Delivered achieved in such year. Seller will, at Purchaser’s election, remit such Output Guarantee Deficit Payment to Purchaser within forty-five (45) days of the final day of the applicable calendar year or provide a credit to Purchaser on the next monthly invoice.

Contract Year	Guaranteed Yearly Solar System Output Amount (MWh)
1	22,828
2	22,691
3	22,555
4	22,419
5	22,285
6	22,151
7	22,018
8	21,886
9	21,755
10	21,624
11	21,495
12	21,366
13	21,237
14	21,110
15	20,983
16	20,857
17	20,732
18	20,608
19	20,484
20	20,361
21	20,239
22	20,118
23	19,997
24	19,877
25	19,758
26	19,639
27	19,521
28	19,404
29	19,288
30	19,172

### G3. Exclusions and Limitations:

- A. Purchaser acknowledges and agrees that neither the Availability Guaranty nor the Solar System Output Guaranty, as applicable, shall be deemed to apply to the System during any period during which (i) a Force Majeure Event has occurred and is continuing, (ii) the natural gas supply to the System is disrupted or terminated as a result of causes other than the action or inaction of Seller, (iii) Seller has given advanced notice of scheduled planned outage for maintenance (“Excused Maintenance Outages”), which shall only be scheduled during low load periods and shall not exceed [XX] hours per year, (iv) such System’s delivery of electricity to Purchaser has been suspended or made impossible by Purchaser, or (v) Purchaser is otherwise in breach of this Agreement.
- B. Nothing in this Availability Guaranty, the Solar System Output Guaranty, or in the Agreement limits Seller’s ability to procure, install, replace, augment and operate component parts of the System on a temporary or permanent basis, or use backup power on a temporary basis not to exceed [XX] hours per year, in order to meet Seller’s Contract Capacity obligations under this Agreement and avoid payments to Purchaser under the Availability Guaranty or the Solar System Output Guaranty. For the avoidance of doubt, Seller shall not permanently replace Solar Facilities with non-renewable facilities, Notwithstanding any of the foregoing, to the extent Seller uses non-renewable generation to avoid a Solar System Output Guaranty deficit, Seller shall remain liable for providing at its sole cost and expense Replacement Environmental Attributes in connection with any such replacement generation.
- C. Seller’s aggregate liability for payments pursuant to the Availability Guaranty or the Solar System Output Guaranty (collectively) shall not exceed [one hundred dollars (\$100.00)], per installed MW of System Capacity.

### G4. Storage Capacity Test

Prior to the first Deliverability Notice, Seller shall complete an energy storage capacity test for Storage Facilities in accordance with procedures, requirements, and protocols dictated by the independent engineer that will be engaged as part of the project financing process. Seller shall provide Purchaser three days’ notice of such test. Purchaser shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Purchaser shall be responsible for all costs, expenses, and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. All other costs of any Storage Capacity Test shall be borne by Seller. Following each Storage Capacity Test, Seller shall provide a copy of the results of the energy storage capacity test, as verified by the independent engineer. If the actual capacity determined pursuant to a Storage Capacity Test is less than the current Contract Capacity of the Storage Facilities, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Contract Capacity of the Storage Facilities at the beginning of the day following the completion of the test for all purposes under this Agreement.

## Appendix H: Insurance Requirements

Seller, at its sole cost and expense, and without limiting any of its other obligations or liabilities, shall maintain in effect at all times from the Effective Date through the Term not less than the following coverage and limits of insurance, which shall be maintained in forms reasonably acceptable to Purchaser and with insurers licensed to do business in the State of California and rated at least A- (minus) VII by AM Best, or at the sole discretion of Purchaser, equivalent financial rating assigned by an acceptable rating agency. Seller is responsible for ensuring all subcontractors procure and maintain appropriate levels of insurance, as to protect the interests of Seller and Purchaser, based upon the applicable scope of work:

1. Commercial Liability or Comprehensive General Liability Insurance

Commercial general liability or comprehensive general liability insurance shall include, but not necessarily be limited to, coverage for premises and operations, contractual liability, personal injury liability, products/completed operations for the Term of the Agreement, and independent contractors, in an amount not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit for bodily injury and property damage, two million dollars (\$2,000,000.00) aggregate. Seller will also maintain an umbrella insurance policy in a minimum limit of liability of ten million dollars (\$10,000,000). Purchaser must be properly included as additional insured on this policy as stated on page two of these requirements. Such insurance shall be primary insurance with respect to Purchaser and must stipulate that any other insurance maintained by or available to Purchaser is excess and noncontributing insurance.

2. Employer's Liability Insurance

Employer's liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regarding to bodily injury by disease, the one million dollars (\$1,000,000.00) policy limit will apply to each employee.

3. Business Automobile or Comprehensive Automobile Insurance

Business automobile or comprehensive automobile insurance including, as applicable, owned, non-owned, and hired automobiles, in an amount not less than one million dollars (\$1,000,000.00) per occurrence combined single limit of bodily injury and property damage. Coverage to include non-owned and hired auto or "any auto" with Purchaser properly included as additional insured.

If applicable, coverage shall include U.S. Department of Transportation Form MCS-90 (or comparable form required by other agencies) providing pollution coverage for transportation of hazardous waste.

4. Workers' Compensation

Workers' Compensation insurance as required by the State of California, including Employers Liability limits of not less than one million dollars (\$1,000,000.00) per occurrence.

5. Construction All-Risk Insurance

Seller shall maintain or cause to be maintained during the construction of the System prior to the first Deliverability Notice, construction all-risk form property insurance covering the System during such construction periods, and including the Seller as an insured and lender, if any, as the loss payee.

All required policies shall provide that written notice by mail be given to Purchaser, (i) thirty (30) calendar days prior to cancellation, non-renewal, or reduction of coverage below the required limits of this Agreement, and (ii) at least ten (10) days' notice for nonpayment of premium. In the event any of the required policies do not comply with this requirement, Seller shall be required to provide immediate notice to Purchaser upon Seller's receipt of notice from Seller's insurance company of cancellation, non-renewal, or reduction in coverage below the required limits of this Agreement.

Each insurance policy required pursuant to this Agreement excepting policies for Workers' Compensation shall contain the following:

- a. Endorsements (blanket or otherwise) including the Gonzales Energy Authority, its directors, officers, agents, employees, and volunteers, and each of them, as additional insureds as respects liabilities arising out of the performance of any work under this Agreement.
- b. "Cross Liability" or "Severability of Interest" clause.
- c. Provisions or endorsements (blanket or otherwise) stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by Seller under this Agreement, including that set forth in the indemnity provisions of this Agreement.

Upon Purchaser's request, Seller shall furnish Purchaser with certificates of insurance and with original endorsements affecting coverage required by the Agreement.

Purchaser may inspect the required policies, in person, at Seller's headquarters, during normal business hours.

Any of Seller's deductibles or self-insured retentions must be declared in the certificates of insurance furnished to Purchaser.

Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

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