

TERMS AND CONDITIONS FOR PURCHASE OF AS-AVAILABLE ENERGY

Facilities with a design capacity of 100 kW or less

Dated October 3, 2023

These Terms and Conditions are applicable to the Agreement For Purchase of As-Available Energy as made and entered by and among the QF, with respect to the Facility identified in the Agreement For Purchase of As-Available Energy, the Municipal Energy Agency of Nebraska, a political subdivision organized under the laws of the State of Nebraska, having its principal place of business at 8377 Glynoaks Drive, Lincoln, Nebraska (hereinafter referred to as "MEAN"), and the Participant identified in the Agreement For Purchase of As-Available Energy (hereinafter referred to as the "Participant"). The QF, MEAN and Participant may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the QF, one of Participant's customers, intends to install the facility identified in the Agreement For Purchase of As-Available Energy; and

WHEREAS, the QF desires Parallel Operation with Participant and to sell the net output generated by the Facility to MEAN, and MEAN desires to purchase any as-available energy to be generated by the Facility and made available for sale to MEAN, consistent with Net Metering Rules, as such rules may be amended from time to time; and

WHEREAS, MEAN is the total requirements supplier of electricity to Participant under a written agreement executed by and between MEAN and Participant, as such agreement may be modified or superseded from time to time (hereinafter referred to as the "Total Requirements Agreement"); and

WHEREAS, to honor the provisions of the Total Requirements Agreement and the Renewable Distributed Generation Policy adopted by the MEAN Board of Directors, as such policy may be modified or superseded from time to time (hereinafter referred to as the "MEAN DG Policy"), the QF desires to sell to MEAN, and MEAN desires to purchase, all as-available energy generated by the Facility; and

WHEREAS, the QF has acquired or will acquire agreements regarding interconnection, distribution and transmission service with the Participant in whose service territory the Facility is to be located;

ARTICLE I: DEFINITIONS

As used in the Agreement for Purchase of As-Available Energy and these Terms and Conditions for Purchase of As-Available Energy, the following capitalized terms shall have the following meanings:

- 1.1 **Agreement** means the Agreement for Purchase of As-Available Energy and these Terms and Conditions for Purchase of As-Available Energy.
- 1.2 **As-Available Energy** means energy produced and sold by a QF on an hour-by-hour basis for which contractual commitments as to quantity, time, or reliability of delivery are not required.

- 1.3 **Environmental Attributes** means with respect to a specified quantity of electricity, the right of a purchaser of such Environmental Attributes to claim, under applicable energy generation disclosure and tracking laws and regulations, all of the non-energy attributes and value associated with the generation of such renewable power, including: any green tags, tradable renewable certificates or similar renewable energy certificates, credits, values or premiums associated with such renewable energy generation; any output-based incentive, allocation, credit, value, set-aside allowance or non-energy attribute relating to or arising out of the production of renewable wind or solar energy generation, and emission and greenhouse gas reductions; whether any of the foregoing arises pursuant to existing or future energy generation disclosure and tracking laws and regulations, or existing or future certification, certification program, trading market or exchange.
- 1.4 **Execution Date** means the date on which the Parties execute the Agreement For Purchase of As-Available Energy.
- 1.5 **Facility** means all equipment, as described in the Agreement, for the Facility identified in the Agreement For Purchase of As-Available Energy, used to produce electric energy and, for a cogeneration facility, used to produce useful thermal energy through the sequential use of energy.
- 1.6 **FERC** means the Federal Energy Regulatory Commission and any successor.
- 1.7 **Force Majeure Event** means an event or occurrence that is not reasonably foreseeable by a Party, is beyond its reasonable control, and is not caused by its negligence or lack of due diligence, including, but not limited to, natural disasters, fire, lightning, wind, perils of the sea, flood, explosions, acts of God or the public enemy, strikes, lockouts, vandalism, blockages, insurrections, riots, war, sabotage, action of a court of public authority, or accidents to or failure of equipment or machinery, including, if applicable, equipment of the Transmission Service Utility or Participant.
- 1.8 **Interconnection Facilities** means all equipment located on Participant's side of the Point of Delivery, including without limitation equipment for connection, switching, transmission, distribution, protective relaying and safety provisions which in the Participant's judgment is required to be installed for the delivery and measurement of electric energy into Participant's system on behalf of the QF, including all metering and telemetering equipment installed for the measurement of such energy regardless of its location in relation to the Point of Delivery.
- 1.9 **KW** means one (1) kilowatt of electric capacity.
- 1.10 **KWH** means one (1) kilowatt-hour of electric energy.
- 1.11 **MEAN** means Municipal Energy Agency of Nebraska, the Participant's wholesale power provider, or any successor.
- 1.12 **Net Metering Rules** means applicable state or federal laws, rules or regulations requiring the Participant or MEAN to measure and bill only the difference between electricity supplied by the utility and the electricity generated by the QF.

- 1.13 **Parallel Operation** means the QF will engage in interconnected operation of the QF's generating facility with Participant.
- 1.14 **Participant** shall be as identified in the Agreement For Purchase of As-Available Energy.
- 1.15 **Point of Delivery** means the retail revenue meter at the QF site where electric energy delivered to MEAN pursuant to the Agreement enters Participant's system.
- 1.16 **Point of Interconnection** means the point on Participant's system where the Facility is interconnected, which point is identified in the Agreement For Purchase of As-Available Energy.
- 1.17 **Point of Metering** means the retail revenue meter at the QF site where electric energy delivered to MEAN pursuant to the Agreement enters Participant's system, the address of which is identified in the Agreement For Purchase of As-Available Energy.
- 1.18 **Qualifying (Small Power Production or Cogeneration) Facility ("Qualifying Facility")** means a facility that meets the requirements defined in the Public Utility Regulatory Policies Act, as it may be amended from time to time ("PURPA") for a Small Power Production qualifying facility.
- 1.19 **Transmission Service Utility** means the provider or providers of transmission service of 50 kV or greater outside the service area of Participant utilized to either deliver power to the Point of Delivery or on the bulk transmission system.

ARTICLE II: FACILITY

- 2.1 The Facility shall be located in the electric service territory of the Participant. The Facility shall be designed and constructed by the QF or its agents at the QF's sole expense. The Agreement applies only to the Facility described in the Agreement For Purchase of As-Available Energy, and shall not apply to any expansion of the nameplate capacity or any additional capacity of QF unless otherwise agreed in an amendment signed by all Parties.
- 2.2 Throughout the Term of the Agreement, the Facility shall be a Qualifying (Cogeneration or Small Power Production) Facility. In the event the Facility does not maintain its status as a Qualifying Facility, the Agreement shall be immediately deemed null and void as of said date and of no further effect.
- 2.3 If required and unless the QF is already interconnected to a transmission or distribution system, no later than sixty (60) days after the Execution Date, the QF shall apply to its Transmission Service Utility for transmission service including a system impact study, if required. The QF shall continue the interconnection process in a timely manner so as to maintain its position in the interconnection queue.
- 2.4 The QF intends to begin deliveries to MEAN, by the date identified in to the Agreement For Purchase of As-Available Energy.

ARTICLE III: TERM

Subject to Article XI, the Term of the Agreement shall begin on the Execution Date and shall continue until twenty (20) years following the Execution Date unless sooner terminated upon at least ninety (90) days advance written notice by MEAN or upon at least ninety (90) days advance written notice by the QF, which notice must include an explanation satisfactory to MEAN to demonstrate that the QF has established alternative arrangements for managing any excess output from the Facility to minimize impact to the Participant and MEAN; *provided, however*, the Agreement shall automatically terminate if the Total Requirements Agreement between the Participant and MEAN terminates and wholesale power deliveries by MEAN to Participant cease. Upon termination or expiration of the Agreement, the Parties shall be relieved of their obligations under the Agreement except for the obligation to pay each other all monies under the Agreement, which obligation shall survive termination or expiration.

ARTICLE IV: PURCHASE OF AS-AVAILABLE ENERGY

- 4.1 The QF shall deliver and sell the As-Available Energy to MEAN and MEAN agrees to purchase, accept and pay for the As-Available Energy made available to MEAN, and which MEAN is available to receive, at the Point of Delivery in accordance with the terms and conditions of the Agreement, or a separately negotiated contract.
- 4.2 The QF shall not commence initial deliveries of energy to the Point of Delivery without the prior written consent of MEAN, which consent shall not unreasonably be withheld or delayed.
- 4.3 QF shall retain any and all rights to own and to sell any and all Environmental Attributes associated with the electric generation of the Facility.
- 4.4 In the event that MEAN has not received any deliveries of energy from the QF by the date in Section 2.4 or for a period of two (2) years or more, then MEAN will contact the QF in writing using the information in Article XV requesting the QF's future plans. MEAN shall have the right to terminate the Agreement unless the QF replies in writing within ninety (90) days to inform MEAN that the QF would like the Agreement to continue.

ARTICLE V: INTERCONNECTION AND CURTAILMENT

- 5.1 The QF's interconnection scheduling and cost responsibilities and parallel operating procedures shall be those specified in a separate interconnection agreement.
- 5.2 The locations and voltage of the Point of Interconnection and the Point of Metering are as set forth in the Agreement For Purchase of As-Available Energy.
- 5.3 Participant will require the QF to curtail production, and the QF agrees to curtail, in the event of a Participant, MEAN or regional system emergency or light load conditions. Notice shall be given by Participant to QF according to Article XV.15.2 as soon as an emergency or light load condition is determined. Participant will require the QF to curtail production as soon as possible, but not later than thirty (30) minutes of receiving such notice. No compensation shall be due to Participant or QF for any lost production due to such curtailment.

- 5.4 MEAN shall not be responsible for any interconnection arrangements or obligations with the Transmission Service Utility.

ARTICLE VI: ENERGY PAYMENTS

For that electric energy received by MEAN at the Point of Delivery each month, MEAN will pay the Participant and the Participant will pay the QF at the then-current MEAN avoided cost rate for Qualifying Facilities with a design capacity of less than 100 kW, as calculated for the Facility. QF waives any right to seek the PURPA avoided cost rate.

ARTICLE VII: PARTICIPANT AND MEAN ARRANGEMENTS FOR ADDITIONAL POINT OF DELIVERY UNDER TOTAL REQUIREMENTS AGREEMENT

To the extent the energy generated by the QF and purchased by MEAN is used by MEAN to serve Participant under the Total Requirements Agreement or other power supply agreement between MEAN and Participant, the energy may be delivered by MEAN to the Participant at the QF's Point of Interconnection with the Participant or alternate point at which MEAN acquires the energy as agreed in writing between MEAN and the Participant or Participant's customer.

ARTICLE VIII: METERING

All electric energy generated by the QF shall be capable of being measured at the Point of Metering. All electric energy delivered to MEAN shall be adjusted for losses from the Point of Metering to the Point of Delivery if such points are at different locations. Any additional required metering equipment to measure electric energy and the telemetering equipment necessary to transmit such measurement to a location specified by MEAN shall be installed, calibrated and maintained by Participant, and to the extent permitted by applicable law all related costs shall be charged to the QF, as part of the Interconnection Facilities if specified in a separate interconnection agreement.

ARTICLE IX: PAYMENT PROCEDURE

- 9.1 Except to the extent applicable law establishes an alternative billing procedure, bills shall be issued and payments shall be made monthly in accordance with the following procedures:
- 9.1.1 The electric energy payment calculated for a given month shall be tendered by MEAN to Participant under the Total Requirements Agreement, and from Participant to the QF on the regular utility bill from Participant to QF. MEAN will not be responsible for compensating the QF.
 - 9.1.2 Payments to be made under the Agreement shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by any Party.

ARTICLE X: INSURANCE

The provisions of this Article shall apply to the extent permitted under applicable law. The provisions of this Article do not apply to a QF whose Facility is not directly interconnected with Participant's system.

- 10.1 The QF shall deliver to MEAN, at least fifteen (15) days prior to the commencement of any work on the Interconnection Facilities, a certificate of insurance certifying the QF's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State where the Facility is located naming the QF as a named insured and MEAN and Participant as additional named insureds, which policy shall contain language specifically covering liabilities arising out of the interconnection with the Facility, or caused by the operation of the Facility or by the QF's failure to maintain the Facility in satisfactory and safe operating condition.
- 10.2 The insurance policy providing such coverage shall provide public liability insurance, including property damage, in an amount not less than \$1,000,000 for each occurrence. The required insurance policy shall provide that coverage shall not be canceled or materially changed, except with thirty (30) days notice to the Participant and MEAN.
- 10.3 The QF shall pay all premiums and other charges due on said insurance policy and shall keep said policy in force during the entire period of interconnection with the Participant.

ARTICLE XI: REGULATORY CHANGES

In the event PURPA is repealed, or in the event of modification to PURPA or to FERC's implementation of PURPA in any way that eliminates the obligation of a utility such as MEAN or Participant to purchase the output of the Facility, MEAN shall have the right but not the obligation to terminate the Agreement upon ten (10) days written notice to the other Parties.

ARTICLE XII: FACILITY RESPONSIBILITY AND ACCESS

- 12.1 Representatives of MEAN and Participant shall at all reasonable times have access to the Facility and to property owned or controlled by the QF and having relationship to the interconnection for the purpose of inspecting, testing, and obtaining other technical information deemed necessary by MEAN or Participant in connection with the Agreement. Any inspections or testing by MEAN or Participant shall not relieve the QF of its obligation to maintain the Facility.
- 12.2 In no event shall any MEAN or Participant statement, representation, or lack thereof, either express or implied, relieve the QF of its exclusive responsibility for the Facility and its exclusive obligations, if applicable, with the Transmission Service Utility. Any MEAN or Participant inspection of property or equipment owned or controlled by the QF or the Transmission Service Utility, or any MEAN or Participant review of or consent to the QF's or the Transmission Service Utility's plans, shall not be construed as endorsing the design, fitness or operation of the Facility or the Transmission Service Utility's equipment nor as a warranty or guarantee.

ARTICLE XIII: INDEMNIFICATION

To the extent permitted by applicable law, each Party agrees to indemnify and save harmless the other Parties, and their employees, agents, officers, and directors, against any and all liability, loss, damage, costs or expense which the other Parties, their employees, agents, officers and directors may hereafter incur, suffer or be required to pay by reason of negligence on the part of the indemnifying Party in performing its obligations pursuant to the Agreement.

ARTICLE XIV: EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND INDIRECT DAMAGES

NO PARTY SHALL BE LIABLE TO THE OTHERS FOR INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, THE COST OF REPLACEMENT POWER, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE.

ARTICLE XV: COMMUNICATIONS

- 15.1 Any non-emergency or operational notice, request, consent, payment or other communication made pursuant to the Agreement to be given by one Party to any other Party shall be in writing, either personally delivered or mailed to the representative of said other Party designated in the Agreement For Purchase of As-Available Energy, and shall be deemed to be given when received.
- 15.2 Communications made for emergency or operational reasons may be made to the persons designated for such communications in the Agreement For Purchase of As-Available Energy and shall thereafter be confirmed promptly in writing.
- 15.3 The Parties' representatives designated in the Agreement For Purchase of As-Available Energy shall have full authority to act for their respective principals in all technical matters relating to the performance of the Agreement. However, they shall not have the authority to amend, modify, or waive any provision of the Agreement.

ARTICLE XVI: SECTION HEADINGS FOR CONVENIENCE

Article or section headings appearing in the Agreement are inserted for convenience only and shall not be construed as interpretations of text.

ARTICLE XVII: GOVERNING LAW

The interpretation and performance of the Agreement and each of its provisions shall be governed by the laws of the State of Nebraska.