

**Form of Agreement for Ongoing Functional Guarantee Services**

This Agreement Number 86449584-2696 is entered into by and between Augusta Transit, a division of The City of Augusta, Georgia, a Georgia municipality, having offices at 2844 Regency Blvd. Augusta, GA 30904 (“**Buyer**”), and Georgia Power Company, a Georgia corporation having offices at 241 Ralph McGill Boulevard, N.E., Atlanta, GA 30308 (“**Seller**”), as of November 1, 2024 (the “**Effective Date**”). This Form of Agreement, and all Exhibits, Schedules, and amendments hereto will be referred herein to as the “**Agreement**.” Georgia Power intends to assign this Agreement to Patowmack Energy Services, LLC, a Delaware limited liability company with offices at 1808 Adams Mill Road, NW, Washington, DC 20009 (“**Sparkfund**” or “**Seller**”) following execution of this Agreement. This Form of Agreement, and all Exhibits, Schedules and amendments hereto will be referred herein to as the “**Agreement**.” Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the General Terms and Conditions.

<b>Parties:</b>			
<b>Seller:</b>	Georgia Power Company, a Georgia corporation whose registered office is at 241 Ralph McGill Boulevard, N.E., Atlanta, GA 30308		
<b>Buyer:</b>	Augusta Transit, a division of the City of Augusta, Georgia, a Georgia municipality, with offices at 2844 Regency Blvd. Augusta, GA 30904		
<b>Project Details:</b>			
<b>Project Name:</b>	Augusta Transit Electric Bus Charging - Functional Guarantee		
<b>Project Location:</b>	2844 Regency Blvd. Augusta, GA 30904		
<b>Services:</b>			
<b>Services:</b>	Ongoing Functional Guarantee Services for 5 year period, as further defined in Schedule 1		
	City of Augusta, GA Ongoing Services & Functional Guarantee for two EV Charging Stations (“Technology”):	Quantity:	Included in Scope?
	ChargePoint EXPP-PL1011X-5AS1-FTA Power Links and supporting power distribution equipment, installed under Agreement Number 12825220-9427 (“ <b>Installation Agreement</b> ”)	6	Yes
	Management of warranty claims arising under the Installation Agreement, Schedule 2		
<b>Price and Payment:</b>			
<b>Contract Price:</b>	<b>Monthly Contract Price:</b>	\$512.86/ month for 60 monthly payments beginning at Acceptance or Deemed Acceptance under the Installation Agreement	
	Service Term	5 years	
	<b>Total Contract Price:</b>	<b>\$30,778.09</b>	
<b>Exhibit A</b>	General Terms and Conditions		
<b>Exhibit B</b>	Form of Change Order		

<b>Exhibit C</b>	Payment Servicing Acknowledgement
<b>Schedule 1:</b>	Functional Guarantee

**EXECUTED** by the Parties on the Effective Date.

<b>City of Augusta, GA</b>	<b>Georgia Power Company</b>
_____ (SIGNATURE)	_____ (SIGNATURE)
<b>Garnett L. Johnson</b> _____ (PRINT NAME)	_____ (PRINT NAME)
<b>Mayor</b> _____ (PRINT TITLE)	_____ (PRINT TITLE)

## EXHIBIT A

### General Terms and Conditions for Ongoing Functional Guarantee Services

- A. **Definitions.** Capitalized words shall have the meaning defined herein or as set out in the Agreement.
- a. **"Agreement"** means this Agreement, including all documents belonging to this Agreement as may be set forth therein.
  - b. **"Project"** means the installation, delivery, procurement, maintenance, or operation of certain goods and services at, or intended for, certain commercial property location(s) owned, operated, or leased by Buyer.
  - c. **"Project Location"** means the commercial property location(s) owned, operated, or leased by Buyer.
  - d. **"Services"** means any and all goods, equipment, labor, or services required of the Seller to perform the Services identified in this Agreement, including such that may be reasonably inferred from the Agreement.
  - e. **"Subcontractor"** means any third party providing goods, equipment, labor or services to Seller in relation to any part of the Services.

#### Section 1: Performance of Services

- A. **Standard of Performance.** Seller warrants it has the necessary resources, financial and otherwise and the experience and capability including sufficient and competent supervisors and other personnel to efficiently and expeditiously perform the Services according to industry standards and in accordance with the Agreement and Seller undertakes that it will continuously maintain sufficient personnel to so accomplish the Services. The Services shall be performed in accordance with all applicable manufacturer warranties, applicable federal and state laws, ordinances, statutes, rules, or regulations, including, but not limited to, Occupational Safety and Health Administration ("**OSHA**") safety and health standards, and prudent industry standards applicable to the Project Location. Seller shall obtain, maintain, and comply with all applicable licensing requirements, permits, consents, and approvals required by law to perform the Services ("**Permits**"). Seller will comply with all policies and procedures applicable to the Project Location.
- B. **Waste.** Unless otherwise agreed by the Parties and except for Hazardous Materials existing at the Project Location, Seller shall independently arrange for the collection and lawful disposal and/or recycling of debris generated in the performance of its work. Seller will show evidence of collection and disposal in the form of tickets, diversion reports, or other similar documentation from a waste management firm, if requested.
- C. **Hazardous Materials.** The term "**Hazardous Materials**" shall mean, collectively, any pollutants, contaminants, hazardous wastes, toxic substances, and hazardous materials, as those terms are defined under by the U.S. Environmental Protection Agency and applicable federal, state and local laws, rules, and regulations. Other than Hazardous Material that have been brought to the Project Location by Seller in the performance of the Services, Seller assumes no risk or liability for any claims, damages, delays attributable to the presence of Hazardous Materials at the Project Location. Buyer will promptly notify Seller of any Hazardous Materials that to its knowledge are located at any Project Location and of any changes or updates of the foregoing that Buyer gains knowledge of. In the event Seller or Subcontractors encounter Hazardous Material at the Project Location, other than material that has been brought to the Project Location by Seller in the performance of the Services, Seller and Subcontractors will stop work in the affected area of the Project Location and report the condition to Buyer promptly after discovery. Neither Seller nor Subcontractors will use, or allow another person or entity within Seller's or such Subcontractor's control to use, any part of the Project Location for the storage, use, treatment or sale of any Hazardous Material, except in connection with the provision of the Services and as permitted under applicable laws. Each Party will promptly notify the other Party of any communication, written or oral, received from any governmental agency or other similar entity concerning (i) any alleged violations of any law related to Hazardous Material or (ii) any investigation or request for information relating to Hazardous Material, in each case with respect to the Services or any Project Location.
- D. **Access.** If Seller is denied access to a Project Location, Seller will promptly notify Buyer, and, other than as a result of Seller's breach of the Agreement, Seller will be excused from any resulting delay in performance of Seller's obligations to the extent that such performance is dependent on such access.
- E. **Schedule.** The Services shall be performed in a timely manner in accordance with the time periods set forth in Schedule 1.
- F. **Subcontractors.** Prior to engaging any Subcontractors to perform any of the Services, Seller shall notify Buyer in writing, identifying the Subcontractor, including the qualifications of the Subcontractors and the Services such Subcontractor shall be performing. If Seller utilizes Subcontractors then Seller is directly liable for the performance of all obligations under the Agreement. Upon Buyer's request Seller shall provide lien waivers from any or all Subcontractors. Seller shall be responsible for any nonperformance or deficiencies in performance of the Services by any of its Subcontractors. In

accordance with Chapter 10B of the Augusta, GA. Code, Contractors agree to collect and maintain all records necessary for Augusta, Georgia to evaluate the effectiveness of its Local Small Business Opportunity Program and to make such records available to Augusta, Georgia upon request. The requirements of the Local Small Business Opportunity Program can be found at [www.augustaga.gov](http://www.augustaga.gov). In accordance with AUGUSTA, GA. CODE, Contractors shall report to Augusta, Georgia the total dollars paid to each subcontractor, vendor, or other business on each contract, and shall provide such payment affidavits, regarding payment to subcontractors, if any, as required by Augusta, Georgia. Such utilization reports shall be in the format specified by the Director of Minority and Small Business Opportunities, and shall be submitted at such times as required by Augusta, Georgia. Required forms can be found at [www.augustaga.gov](http://www.augustaga.gov). If you need assistance completing a form or filing information, please contact the Local Small Business Opportunity Program Office at (706) 821-2406. Failure to provide such reports within the time period specified by Augusta, Georgia shall entitle Augusta, Georgia to exercise any of the remedies set forth, including but not limited to, withholding payment from the contractor and/or collecting liquidated damages.

- G. All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program. All contractors and subcontractors must provide their E-Verify number and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to its contract with Augusta, Georgia the contractor will secure from such subcontractor(s) each subcontractor's E-Verify number as evidence of verification of compliance with O.C.G.A. § 13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to Augusta, Georgia at the time the subcontractor(s) is retained to perform such physical services.
- H. **Improper Conduct and Unqualified Personnel.** Buyer shall have the right to instruct Seller to remove any personnel (including those of Subcontractors) assigned to the Services who do not conduct themselves in accordance with Section 1.A above or unable or unwilling to perform their respective tasks. Any such instruction shall be notified to Seller in writing, stating the reasons therefore. Upon receipt of such instruction, Seller shall promptly remove and replace such personnel with competent approved substitutes at Seller's risk and expense.
- I **Limited Warranty.**
- a. **Services.** The warranty provided hereunder, also called the "Ongoing Functional Guarantee," Seller's obligations and Buyer's remedies thereto, are set forth in Schedule 1.

- b. The limited warranties provided hereunder do not apply to any repair, replacement, correction or maintenance required due to (1) improper use, operation, maintenance, repairs, loss, damage, or service of the Serviced Equipment, (2) any Force Majeure Event, (3) power or voltage surge, or (4) any failure by Buyer to use and/or operate the Serviced Equipment in accordance with the manufacturer's written instructions or specifications. Seller shall not be responsible for providing working access to the Defect, including disassembly and reassembly of the part, or for providing transportation to repair or factory facility, all of which shall be at Buyer's risk and expense. J. **Change Orders.**
- a. Change orders must be agreed to in writing by the Parties in order to be valid ("**Change Order**"). Change Orders may pertain to: (i) change in the scope, (ii) adjustment of the Project Cost, and/or (iii) adjustment to the agreed Project schedule; provided, however, that, if the Parties have agreed upon a time & materials rate card ("**T&M Rate Card**") in effect at the time of the Change Order and the Change Order requires any adjustment of the Project Cost, such adjustment shall be in accordance with the T&M Rate Card agreed upon by the Parties. Prior to Buyer's written consent with respect to a Change Order, Seller shall provide Buyer documentation for Buyer's evaluation of the costs as presented, including, but not limited to, quotations, invoices, timesheets, and schedules. Seller shall proceed promptly to complete the work set forth in the Change Order upon written consent from Buyer.
- b. **Seller's Right to Request a Change Order.** If the Seller considers that an occurrence has taken place for which it is entitled to receive a Change Order, before proceeding with any work affected by such occurrence, shall promptly request in writing that the Company issue a Change Order. Any such request shall include details of the occurrence including any relevant dates and the Sections of the Agreement under which Seller considers itself to be entitled to a Change Order. Such occurrences shall include but not be limited to the following: (i) an instruction from Buyer, whether contained in drawings or specifications issued by Buyer or not, which in the opinion of Seller constitutes a revision to the Services; (ii) matters arising under any Section of the Agreement in respect of which it is specifically stated that a Buyer shall bear the costs/time impact thereof; (iii) any failure by Buyer and/or its other contractors to perform its/their obligations timely. Buyer shall within a reasonable time of having received a request for a Change Order and the supporting estimates give notice to the Seller stating: (i) that the proposed Change Order or part thereof is accepted in principle in which case Buyer will issue such Change Order; and/or (ii) that what is requested or part thereof is included in the obligations undertaken by Seller under the terms of the Agreement and that the request is accordingly rejected; and/or (iii) that the request or part thereof is rejected for other stated reasons. Should the Seller wish to pursue any request for a Change Order or part thereof which has been rejected by Buyer it shall notify Buyer thereof and the Parties shall negotiate in good faith to resolve the dispute.
- c. Seller acknowledges that this contract and any changes to it by amendment, modification, Change Order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, Seller is deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of Seller's provision of goods or services to Augusta, Georgia under an unauthorized contract, amendment, modification, Change Order or other similar document, including the possibility that the Seller's may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Seller agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the Contractor provides goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by Contractor. Contractor assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia, and it waives all claims

to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized, including, without limitation, all remedies at law or equity." This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts.

- K. **Review.** Seller shall review all dimensions, elevations, and quantities in documents furnished to it by or on behalf of Buyer. Seller shall promptly notify Buyer of any discrepancy between such documents provided and the conditions at Project Location, or any error or omission in such documents Seller may discover in the course of the Services. Any impact to Seller's costs and/or schedule due to such discrepancies, errors and/or omissions shall be for the account of Buyer.
- L. **Stop Work Orders.** Buyer may, by written notice to Seller, suspend at any time the performance of all or any portion of the Services. During the period of suspension, Seller shall use commercially reasonable efforts to use its plant, labor, and equipment in such a manner as to minimize costs associated with the Stop Work Order. Provided that the Stop Work Order is not the result of a Seller Default, Buyer shall reimburse Seller for all amounts invoiced by Seller for Seller's actual costs incurred for (a) reasonable costs incurred for demobilization, storage, and remobilization of Seller's resources, (b) reasonable costs incurred by Seller to prepare and secure the Project Location for the applicable stop and restart of work, (c) standby charge based upon the period of suspension of the Services, which standby charge shall be sufficient as documented by Seller to reimburse Seller for its actual costs of keeping its organization and equipment committed and/or on standby status and (d) actual increased costs of the Services incurred by Seller due to the Stop Work Order. At Buyer's sole discretion and upon notice to Seller, the stop work order can be deemed a Termination for Convenience of the Agreement and Seller shall be owed the amounts stated in Section 4.D. If such temporary suspension lasts longer than forty-five (45) days from the date of the Stop Work Order, then Seller, upon written notice to Buyer, may declare the Stop Work Order to be a Termination for Convenience and Seller shall be owed the amounts stated in Section 4.D.
- M. **Buyer-Assumed Risk.** Seller assumes no risk or liability for any claims, damages, delays to the Services, nor shall Seller be obligated to perform any Services arising out, or as a result, of any of the following: (i) any Force Majeure Event (as defined below); (ii) Buyer's operation of the Serviced Equipment other than in accordance with the terms of this Agreement and/or applicable manufacturer's recommendations; (iii) any change to any condition at the Project Location occurring after the Effective Date; (iv) Buyer's breach of the Agreement or negligence, fraud, or willful misconduct; (v)

the presence of any and all toxic substances or hazardous materials, or any other unforeseen conditions encountered by Seller at the Project Location that are not introduced by Seller or its Subcontractors; (vi) the location of underground utilities at the Project Location, (vii) any relocation or removal of underground (including but not limited to rock) or overhead obstructions which are not part of Seller's Services and which impacts Seller's costs and/or the schedule (viii) Project Location conditions that make it unsafe for Seller or Subcontractors to complete the Services, or any site conditions that are (a) concealed physical conditions that differ materially from those observed on site by Seller or its Subcontractor, or differ from any statements, materials, or representations made by or provided by Buyer, or (b) unknown physical conditions of an unusual or undetectable nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction and maintenance services that are the subject matter of this Agreement; (ix) any liens or encumbrances, other than placed by or consented to by Seller, on any Services (all of the foregoing, collectively, "Buyer-Assumed Risk"). If a Buyer-Assumed Risk event occurs, Seller may, in its sole discretion, stop work and/or direct its Subcontractors to stop work and promptly issue a notice to Buyer thereof; provided that in no event shall Seller be obligated to settle any labor dispute or disturbance. Buyer shall be responsible for all costs to investigate and/or resolve any Buyer-Assumed Risk, or any costs and/or Schedule delay incurred by Seller and/or its Subcontractors due to such Buyer-Assumed Risk. Seller shall, if applicable, invoice Buyer for such costs incurred, and Buyer shall pay all amounts invoiced within thirty (30) days of the invoice date.

- N. **Force Majeure.** A Party will be excused from its failure to perform its obligations under this Agreement if and to the extent caused by events reasonably outside of its control ("**Force Majeure Event**"); provided, that the Party whose performance is excused by the Force Majeure Event (i) provides notice to the other Party as soon as is reasonably practicable specifying the Force Majeure Event and (ii) uses reasonable efforts to mitigate or remedy its inability to perform as soon as is reasonably practicable. Notwithstanding the foregoing, the following shall not constitute a Force Majeure Event: (a) economic hardship, changes in market conditions, or insufficiency of funds, or (b) unavailability of equipment and supplies, unless such unavailability itself is the result of a Force Majeure Event. The Party experiencing a Force Majeure Event shall give prompt notice to the other Party.

## Section 2: Payments

- A. **Payment of Contract Price.** Buyer will pay the costs due to Seller (the "**Contract Price**") in accordance with the Form of Agreement. Payment shall be made within 30 days from receipt of Seller's invoice.
- a. **Late Payments.** Without prejudice to any other remedy available to Seller under law or equity, late payments shall incur a finance charge computed at a "periodic rate" equal to the greater of: (i) the applicable prime rate as published in the Wall Street Journal plus two and a half percent (2.5%) per annum or (ii) the maximum permissible interest rate under applicable law ("**Late Payment Rate**"). Interest charges on late payments are billed monthly and due upon receipt of Seller's invoice. The payment of interest unaccompanied by payment of the delinquent invoice shall not excuse or cure any breach or delay in such payment. Any partial payments received on past due invoices shall be applied first to the payment of finance charges due and then to the oldest past due invoices.
  - b. **Disputed Payments.** Prior to the expiration of the applicable period for payment of any invoiced amount of the Contract Price, Buyer may, in good faith, dispute any portion of such invoiced amount, including as to whether the Services meet the requirements agreed to in the Agreement, by providing Seller with written notice identifying the basis for such dispute. Thereafter, the payment of such disputed portions of the invoiced amount shall be deferred until such dispute has been resolved in accordance herewith. If a dispute exists with respect to any amount invoiced by Seller, the amount not in dispute shall be promptly paid as described herein, and any disputed amount that is ultimately determined to have been payable by the defaulting Party shall be paid with interest, at the Late Payment Rate, from the date due to the date of payment.
  - c. **Georgia Prompt Pay Act not applicable.** The terms of this Agreement supersede any and all provisions of the Georgia Prompt Pay Act.
- B. **Method of Payment.** For purposes of this Agreement and as reflected in Exhibit C, Buyer acknowledges and agrees that the payments owed by Buyer to Seller shall be invoiced by Georgia Power Company ("**Georgia Power**") on the bill provided by Georgia Power for power charges ("**On-Bill Payments**") and Buyer shall remit payment in accordance with its obligations with respect to On-Bill Payments. Georgia Power shall apply any sum paid by Buyer through On-Bill Payments first to amounts billed by and owing to Georgia Power related to power (including related fees, surcharges, taxes and other amounts owing in respect thereof, including arrearages in respect of any of the foregoing) (collectively, "**Power Charges**") and then to payments set forth in the Form Agreement, until all such amounts have been paid in their entirety.
- C. **Sales Taxes.** Sales and use taxes associated with the Services shall be the responsibility of Seller. Buyer shall indicate, on an invoice, sales or use taxes owed by Seller to the state or taxing authorities for the Services provided hereunder.

## Section 3: Insurance

Each Party will obtain and maintain the insurance required herein for the duration of this Agreement, including any Warranty

Period. The Parties must provide proof of the required insurance. Insurance policies shall include the other Party, and its affiliates, as loss payees and named insureds, but only to the extent of such parties' interest in the Services. All insurance must be endorsed to provide that the additional named insured will receive thirty (30) calendar days written notice of cancellation or material change in policy coverage.

- A. Commercial General Liability in the minimum amount of \$1,000,000 per occurrence, \$2,000,000 annual aggregate premises – operations, \$2,000,000 annual aggregate – products – completed operations.
- B. Property, Installation Floater, Builder's Risk, or other with a minimum coverage equal to the greater of \$50,000 or the full replacement cost of a Party's equipment.
- C. Pollution liability coverage, including clean up costs, in the minimum amount of \$5,000,000 per occurrence and in the aggregate.
- D. Auto Liability in the minimum amount of \$1,000,000 Combined Single Limit Bodily Injury and Property

Damage. E. Worker's Compensation in accordance with the legal requirements in the state where the Project is located.

#### **Section 4: Defaults, Risks and Remedies**

- A. **Defaults.** Any of the following occurrences will constitute an event of "**Default**" of a Party: (i) intentional misrepresentation, fraud, willful misconduct, or any material breach of any of the terms of the Agreement; and (ii) failure to pay any amount within ten (10) calendar days after the payment due date or, (iii) filing of a voluntary or involuntary petition in bankruptcy, confession of insolvency, or any assignment for the benefit of creditors. If a Default occurs, the non-defaulting Party may issue a written notice (a "**Notice of Default**") to the defaulting Party.
- B. **Cure Period.** If the defaulting Party has promptly begun, in good faith, to cure a Default upon receipt of a Notice of Default, the defaulting Party shall thereafter have thirty (30) days following receipt of the Notice of Default to cure such Default, other than in the case of a Buyer Default with respect to failure to make payment when due, for which Buyer will have a five (5) calendar day cure period following Seller's written notice of such payment-related Buyer Default.

**Default. C. Termination for Default.**

- a. In the event of a Seller Default and failure of Seller to cure such Default as permitted herein, Buyer may pursue the following remedies without notice or demand: (i) terminate the Agreement in writing; (ii) replace Seller with a third party for performance of the Services and Seller will reimburse all reasonable costs and expenses incurred by Buyer above the Contract Price in connection with the completion of Services; (iii) collect from Seller any amounts due to Buyer under this Agreement; and (iv) exercise all rights and remedies available to Sparkfund at law or in equity.
  - b. In the event of a Buyer Default, Seller shall have no obligation to provide any Services or perform any other obligation set forth in this Agreement during the applicable cure period. Absent a cure by Buyer to cure such Default as permitted herein, Seller may pursue the following remedies without notice or demand: (i) terminate this Agreement in writing; (ii) call immediately due the sum of any unpaid invoices, (iii) invoice Buyer for any applicable amounts for Services performed but not yet invoiced as of the date of termination, (iv) invoice Buyer for reasonable and actual costs incurred by Seller as a result of such termination, including substantiated cost of all commitments entered into prior to such termination and demobilization of personnel and equipment, and (v) exercise any and all remedies available to Seller under applicable law or in equity.
- Default. D. Termination for Convenience.**
- a. Buyer may order Seller by notice in writing to permanently cease and terminate the performance of the Services. Buyer shall pay Seller, within thirty (30) calendar days of receipt of Seller's invoice of actual and substantiated costs incurred for (1) any applicable amounts for Services performed to date, (2) reasonable and actual costs incurred by Seller on or prior to the date of such termination for convenience, including substantiated cost of all commitments entered into prior to or as a result of any such termination and (3) demobilization of personnel and equipment.

**E. Indemnification.**

- a. **Defense of Claims.** The Seller (the "Indemnifying Party") shall, at its own expense, defend the Buyer, its Affiliates and their successors, assigns, directors, officers, employees, and representatives (each, an "Indemnitee") from and against all third-party claims, demands, suits or causes of action (whether at law or in equity and whether based on applicable laws or on theories of contract, tort, strict liability or otherwise) (collectively, "Claim(s)") brought by a third-party as a result of an Indemnifying Party's performance of, or failure to perform, any obligation under this Agreement.
- b. **Notice and Participation.** The Indemnitee will: (i) give prompt Notice to the Indemnifying Party of any Claim; (ii) provide the Indemnifying Party with reasonable assistance to settle or defend such Claim at the Indemnifying Party's own expense; and (iii) grant to the Indemnifying Party the right to control the defense and/or settlement of such Claim, at the Indemnifying Party's own expense provided, however, that: (a) the



failure to so notify, provide assistance and grant authority and control shall only relieve the Indemnifying Party of its obligation to the Indemnitee to the extent that the Indemnifying Party is prejudiced thereby; (b) the Indemnifying Party shall not, without the Indemnitee's consent (such consent not to be unreasonably withheld or delayed), agree to any settlement that makes any admission on behalf of the Indemnitee; or consents to any injunction against the Indemnitee (except an injunction relating solely to the Indemnitee's continued use of any infringing materials); and the Indemnitee shall have the right, at its expense, to participate in any legal proceeding to contest and defend a claim and to be represented by legal counsel of its choosing but shall have no right to settle a claim without the Indemnifying Party's written consent.

- c. **Indemnification.** The Seller shall pay or reimburse the Buyer for losses, costs, damages, liabilities, fines, penalties and interest; including the costs of settlement, mediation, litigation, arbitration, judgements, expenses and attorney's fees suffered by, or awarded to, an Indemnitee as a result of any Claims relating to (i) the Indemnifying Party's infringement, violation, or misappropriation of a third-party's intellectual property rights; (ii) the Indemnifying Party's violation of law, acts of fraud, gross negligence, or willful misconduct; (iii) damage to, destruction, or loss of real or tangible property; or (iv) injury to or death of any person.

## Section 5: Miscellaneous

- A. **Independent Contractor.** Seller and its Subcontractors will perform the Services as independent contractors. Nothing in the Agreement will be construed to hold Seller or a Subcontractor as an agent, employee or representative of Buyer or entitle Seller any of its or Subcontractor personnel to participate in or receive any benefit from any employee benefit plan sponsored by Buyer.
- B. **Confidential Information.** All drawings, data, documents, and information in relation to the Services, the Project and/or this Agreement, supplied either directly or indirectly by a Party to the other Party or prepared by Seller for the Services shall be kept confidential and shall not be disclosed to any Person without the prior written consent of the disclosing Party, except as may be required by law, regulation or judicial order. Notwithstanding the foregoing, all obligations and rights under this Section 5.B shall be supplementary to any non-disclosure agreement existing or that may be entered into between Seller and Buyer or any of their respective affiliates (each, an "NDA" and collectively, the "NDAs"). In the event of any conflict in the interpretation of the provisions of this Section 5.B and the provisions of any NDA, such provisions shall be read in a mutually consistent way, or if no such reading is reasonably possible, the provision(s) that are most protective of Confidential Information shall take precedence over conflicting or less protective provision(s).
- C. **Assignment.** Buyer may not assign or transfer this Agreement in whole or in part, without Seller's prior written consent, which shall not be unreasonably withheld.
- D. **Seller's Representations and Warranties.** Seller represents and warrants that as of the signature of this Agreement: (i) Seller has the necessary corporate standing and authority, and has received all consents, authorizations, permits, and approvals, necessary to fulfill its obligations under the Agreement (ii) the making and performance by Seller of the Agreement does not violate, breach, or conflict with any agreement or legal requirement to which Seller is bound; (iii) there is no action or proceeding pending or, to Seller's knowledge, threatened before any court or governmental authority that could reasonably be expected to have a materially adverse effect on Seller or the transactions contemplated herein; (iv) all warranties provided to Seller from manufacturers or suppliers with respect to Services will be transferable by their terms to Buyer; and (v) to Seller's knowledge, there is no fact or circumstance which could give rise to a default by Seller Default or right of termination under the Agreement.
- E. **Buyer's Representations and Warranties.** Buyer represents and warrants that as of the signature of this Agreement that (i) Buyer has the necessary standing and authority, and has received all consents, authorizations, permits, and approvals, necessary to fulfill its obligations under the Agreement; (ii) the making and performance by Buyer of the Agreement does not violate, breach, or conflict with any agreement or legal requirement to which Buyer is bound; (iii) there is no action or proceeding pending or, to Buyer's knowledge, threatened before any court or governmental authority that could reasonably be expected to have a materially adverse effect on Buyer or the transactions contemplated herein, including Buyer's payment obligations; (iv) any intended Project Location is at a commercial location adequate for safe performance of the Services; and (v) Buyer has and shall maintain, throughout the Agreement and at least thirty (30) calendar days after the Warranty Period, the right to either (1) lawfully occupy and possess the Project Location or (2) lawfully have access and grant Seller access to the entirety of the Project Location, as applicable.
- F. **Survival.** Those provisions of this Agreement that, by their nature are intended to survive termination or expiration of this Agreement, shall so survive, including but not limited to Sections 1.J, 1.N, 4.E, 5.B, 5.E, 5.F, 5.H, 5.I, 5.K and 5.L.
- G. **Waiver of Consequential Damages.** EXCEPT FOR BREACHES OF SECTION 6.b, UNDER NO CIRCUMSTANCES WILL EITHER PARTY NOR ANY OF ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, OR FOR ANY LOSS OF PROFITS, OPPORTUNITY, REVENUE, GOODWILL, FINANCING, OR USE IN CONNECTION WITH OR ARISING FROM OR AS A RESULT OF PERFORMING OR A FAILURE TO PERFORM ANY OBLIGATION UNDER THE AGREEMENT, WHETHER SUCH LIABILITY ARISES IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, IN EACH CASE WHETHER OR NOT FORESEEN OR FORESEEABLE. NOTWITHSTANDING THE FOREGOING, NOTHING IN

THIS SECTION WILL LIMIT A PARTY'S INDEMNITY OBLIGATIONS IN ACCORDANCE WITH SECTION 4.E FROM ALL DAMAGES AWARDED TO A THIRD PARTY IN A CLAIM BROUGHT BY THAT THIRD PARTY AGAINST AN INDEMNITEE, REGARDLESS OF HOW THOSE DAMAGES ARE CHARACTERIZED.

H. **Limitation of Liability.** IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES (FOR ANY CAUSE WHATSOEVER, INCLUDING DELAY, BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE) ARISING OUT OF OR RELATING TO THE PURCHASE ORDER EXCEED AN AMOUNT EQUAL TO ONE HUNDRED PERCENT

(100%) OF THE AGGREGATE CONTRACT PRICE. THIS LIMITATION OF LIABILITY IS EXCLUSIVE OF THIRD-PARTY LIABILITIES OR OBLIGATIONS DUE TO A BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER.

- I. **Amendments.** Except as otherwise set forth herein, no change, amendment, or modification of the Agreement will be valid or binding upon the Parties hereto unless such change, amendment, or modification will be in writing and duly executed by both Parties.

The law of the State of Georgia shall govern the Agreement between Buyer and Seller with regard to its interpretation and performance, and any other claims related to this agreement. All claims, disputes and other matters in question between Buyer and Seller arising out of or relating to the Agreement, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. The Seller, by executing this Agreement, specifically consents to jurisdiction and venue in Richmond County and waives any right to contest the jurisdiction and venue in the Superior Court of Richmond County, Georgia.

- K. **No Waiver.** Any waiver of the provisions of the Agreement must be in writing and signed by the Party whose interest would be adversely affected, and will not be implied. No exercise of any right or remedy by a Party constitutes a waiver of any other right or remedy contained or provided by applicable law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under the Agreement, will not operate to limit or otherwise affect such rights or remedies. Any waiver of performance hereunder will be limited to the specific performance waived and will not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- L. **No Third-Party Beneficiaries.** No third party, including any Subcontractor, will be considered a third-party beneficiary hereunder.
- M. **Entire Agreement.** The Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersede any and all prior negotiations, contracts, agreements, commitments, and writings with respect thereto.
- N. **Severability.** If any provision of the Agreement is determined to be illegal or unenforceable, such determination will not affect any other provision of the Agreement and all other provisions will remain in full force and effect.
- O. **Counterparts.** The Seller Agreements may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.
- P. **Construction.** No provision of the Agreement will be construed or interpreted for or against either Party because such Party drafted or caused its legal representative to draft the provision.
- Q. **Notices.** All written documentation or notices shall be transmitted via electronic mail and may additionally be sent via post or courier to the addresses set forth on the signature page, or to such other address as a Party may provide in writing.

**EXHIBIT B**

Change Order Form  
Change Order (Change Order) # XX

Project Name:  
Agreement Number:  
Date Issued:

This Change Order (Change Order) is issued for the purpose of amending the Services between Seller and Buyer pursuant to Section 1.1 of the General Terms and Conditions of the Agreement. Upon signature of this Change Order, Seller is authorized to proceed promptly with the changes to the Services described herein.

Adjusted Services:

*Provide brief description of the changed/additional/removed items of scope.*

Cost Add/(Deduct) of the Change Order:

*Provide the net add/(deduct) value of the changed work here.*

Time of performance:

*If time of performance is impacted, provide the magnitude of the change expressed in days/weeks as may be appropriate.  
Establish new End Date, when applicable.*

Original Contract Price:	
Cumulative value of prior Change Orders:	
Revised Contract Price:	
Value of this Change Order:	
New Contract Price:	

EXECUTED by the Parties on \_\_\_\_\_.

Buyer	Seller
(SIGNATURE)	(SIGNATURE)
(PRINT NAME)	(PRINT NAME)
(PRINT TITLE)	(PRINT TITLE)

**EXHIBIT C**  
Payment Servicing Acknowledgement

Georgia Power Company

Re: Appointment of Agent and Acknowledgment

Ladies and Gentlemen:

By this letter, the undersigned customer ("Customer") advises Georgia Power Company ("Georgia Power") that Customer is a party to an agreement with Patowmack Energy Services, LLC, its affiliates or subsidiaries ("Sparkfund"), and desires that Georgia Power serve as billing servicer for Sparkfund with respect to the Customer Agreements. In furtherance hereof, Customer hereby acknowledges and agrees as follows:

1. Georgia Power is acting as a designated servicer for Sparkfund, and for purposes of the Customer Agreements, is not acting as agent for Sparkfund or Customer. Georgia Power further has no duty to Customer under the Customer Agreements, pursuant to its capacity as servicer for Sparkfund;
2. Amounts due and owing to Sparkfund under or in connection with the Customer Agreements will appear as separately monthly line items on Customer's bill for electric service from Georgia Power, and will be remitted to Georgia Power in accordance with such billings until instructed otherwise by Sparkfund;
3. Amounts paid by Customer to Georgia Power will be applied first to amounts billed by and owing to Georgia Power for power charges or other products and services provided by Georgia Power to Customer, including related fees, surcharges, taxes, or other amounts owing, including an arrearage (collectively, "Power Charges"), until all such amounts have been paid in their entirety; and (ii) second, to Sparkfund for amounts owing to Sparkfund in respect of the Customer Agreements;
4. Once Customer has paid any amounts to Georgia Power, Georgia Power will not be obligated to return or refund any payments to Customer for any reason, unless: (i) Sparkfund authorizes and directs Georgia Power to return or refund any payment; and (ii) Georgia Power is in possession of the proceeds of the payment;
5. Amounts owing by Customer to Sparkfund in respect of the Customer Agreements, and all other Customer obligations in respect of the Customer Agreements, are independent in all respects from all Customer obligations to Georgia Power and its affiliates for Power Charges, despite the fact that Georgia Power is acting as Sparkfund's servicer for the Customer Agreements. Among other things, Customer acknowledges that it will not have, and hereby waives, any right of setoff Customer may otherwise have against Sparkfund for amounts owing to Georgia Power in respect of Power Charges; and
6. Customer's obligation to pay amounts due and owing to Sparkfund under and in connection with the Customer Agreements is absolute and unconditional, and no action or failure to act on the part of Georgia Power will be: (i) effective to relieve, release, or excuse Customer from any of its obligations to Sparkfund under the Customer Agreements; or (ii) construed to waive, limit, prejudice, or otherwise adversely affect any right, remedy, or power of Sparkfund under the Customer Agreements or applicable law or at equity.

Customer:

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

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

Date: \_\_\_\_\_

## SCHEDULE 1

### Functional Guarantee

As per Section 1.H of the GTCs.

**1. Services.** The “Services” contemplated in this Agreement to be provided at the Project Location(s), are set forth in this Section 1 and Table 1 below for the Technology.

Table 1: Services.

Service	Description	Frequency Provided
Guarantee	The Guarantee as set forth in <u>Table 2</u> .	Ongoing after Acceptance or Deemed Acceptance under the Installation Agreement through the Service Term
Customer Support	Seller will be available to receive Technology-related inquiries during Seller’s normal business hours. Buyer may contact Seller’s Customer Support at (404) 267-1496 with any concerns or issues.  In the event that Buyer experiences difficulties with the Technology, Performance Reconciliation will be performed as described in <u>Paragraph 3</u> .	Ongoing after Acceptance or Deemed Acceptance under the Installation Agreement through the Service Term
Management of warranty claims	Management of warranty claims arising under the Installation Agreement	Ongoing after Acceptance or Deemed Acceptance under the Installation Agreement through the Service Term

**2. Guarantee.** The specific benefits guaranteed to be delivered to Buyer are set forth in this Paragraph 2 and Table 2 below. Beginning on the Acceptance or Deemed Acceptance under the Installation Agreement, Seller will ensure that the conditions described below (“**Conditions**”) are met at each Project Location, and in the managed spaces, within each Project Location (“**Spaces**”), all as described below (the “**Guarantee**”).

Table 2: Guarantee.

<b>Identifying the Conditions</b>	After the Acceptance or Deemed Acceptance under the Installation Agreement, Seller will ensure that the following conditions (“ <b>Conditions</b> ”) are met at each managed parking space (“ <b>Managed Parking Space</b> ”) identified in Table 5 (“ <b>Guarantee</b> ”). <ul style="list-style-type: none"><li>Condition 1: The measured electrical output (measured in kilowatts) that will be available at each Managed Parking Space (“<b>Measured Charging Capacity</b>”) will be at minimum the stated designed electrical output (measured in kilowatts) identified in Table A-1 as the “<b>Technology Charging Capacity per Managed Parking Space</b>”</li></ul>
<b>Conditions to the Guarantee</b>	Guarantee does not apply when: i) the input electricity supply quality or power output causes Technology failure or inability to operate ii) Existing (Not Installed by Seller) electrical infrastructure is unable to support the Technology iii) Existing (Not Installed by Seller) infrastructure failure is caused by system-wide failure or power outage iv) Telecommunications services and warranties cannot be met or executed v) Vehicle battery will not accept proper charge vi) a Buyer-Assumed Risk occurs.

**3. Condition Failure Level.** “**Condition Failure**” shall mean the failure of the Seller to satisfy, or cause the satisfaction of the Condition(s) set forth in Table 2 during the Agreement Term set forth in Services above. The applicable level of any such Condition Failure (the “**Condition Failure Level**”) shall be calculated as set forth in Table 4.

**4. Reconciliation Periods.**

- A. **Target Time Periods.** When Seller becomes aware of a Condition Failure, Seller shall make commercially reasonable efforts to (i) respond and gather and/or convey information about the possible Condition Failure within the time period set forth in the corresponding “Target time, Seller response to Buyer” column of Table 3 below and (ii) achieve Performance Reconciliation with respect to such Condition Failure within the time period set forth in the corresponding “Target time, Performance Reconciliation” column of Table 3 below. “**Performance Reconciliation**” shall mean the remedy of the applicable Condition Failure by Seller.
- B. **Guaranteed Time Periods.** When Seller becomes aware of a Condition Failure, Seller shall achieve Performance

Reconciliation with respect to such Condition Failure and notify Buyer of such Performance Reconciliation, within the time period set forth in the corresponding “Guaranteed time, Performance Reconciliation” column of Table 3 below.

**Table 3: Guaranteed Time Periods**

Condition Failure Category	Description	Target time, Seller response to Buyer	Target time, Performance Reconciliation	Guaranteed time, Performance Reconciliation
<b>Minor Interruption</b>	<p><b>“Minor Interruption”</b> means a Condition Failure exists, but all of the below conditions set forth below are true with respect to the applicable Technology:</p> <p>Applicable Technology is <b>NOT</b>:</p> <ol style="list-style-type: none"> <li>1. causing a critical operational or safety issue;</li> <li>2. unavailable, inoperable, or significantly degraded; or</li> <li>3. having a material impact on the operations or Buyer's ability to perform their core business.</li> </ol>	<b>3 hours (during normal business hours)</b>	<b>5 business days</b>	<b>30 calendar days</b>
<b>Business Interruption</b>	<p><b>“Business Interruption”</b> means a Condition Failure exists and any of the below conditions are true with respect to the applicable Technology:</p> <p>Applicable Technology is:</p> <ol style="list-style-type: none"> <li>1. causing a critical operational or safety issue;</li> <li>2. unavailable, inoperable, or significantly degraded; or</li> <li>3. having a material impact on the operations or Buyer's ability to perform their core business.</li> </ol>	<b>3 hours (regardless of whether during or outside of normal business hours)</b>	<b>48 hours</b>	<b>5 business days</b>

**Table 4: Condition Failure; Payment Reduction.**

<b>Methodology to determine Condition Failure</b>	<p>“<b>Condition Failure Level</b>” will be calculated with respect to the Technology per the equation below, where Condition Failure Level (1) shall not be less than zero.</p> $\text{Condition Failure Level (1)} = (1 - (\sum \text{Measured Charging Capacity (kW)} / (\sum \text{Technology Charging Capacity (kW)}))$
<b>Payment Reduction</b>	<p>In the event of a Condition Failure, Buyer will receive a reduction in Contract Price (a “<b>Payment Reduction</b>”) in an amount calculated as set forth below. A Payment Reduction may not exceed the value of the Contract Price(s) over the associated Reduction Period (defined below).</p> <p>Payment Reduction (\$) = (Reduction Period) / 30 * Contract Price (\$) * Condition Failure Level</p> <p>Where:</p> <ol style="list-style-type: none"> <li>The Condition Failure Level will be equal to the greatest of Condition Failure Levels calculated pursuant to Paragraph 5 and this Table 5.</li> <li>The “<b>Reduction Period</b>” will be the number of days from the first day where the Condition Failure, associated with the applicable Condition Failure Level, persists after the time-period afforded to perform a Performance Reconciliation, until the day that the Condition(s) is achieved.</li> <li>The applicable Payment Reduction shall be applied to the first Contract Price that occurs five or more days after the start of a Reduction Period.</li> </ol>
<b>Process Diagram</b>	<p>The following diagram reflects the process during the Agreement Term through which Seller will inspect any possible Condition Failures and, if required, respond to such Condition Failure.</p> <pre> graph LR     A[Notice of Condition Failure] --&gt; B[Technology Inspection]     B -.-&gt; If no failure detected  C[No Further Action]     B --&gt; If failure detected  D[Measured Condition Failure]     D --&gt; E[Performance Reconciliation]     E -.-&gt; If properly reconciled  F[No Further Action]     E --&gt; If not reconciled  G[Payment Reduction]     </pre>

**Table 5: Technology Performance**

Project Location*	Number of Managed Parking Spaces*	Technology Charging Capacity per Managed Parking Space
2844 Regency Blvd. Augusta, GA 30904	6	200 kW (@277/480V)