

TERMS AND CONDITIONS

These Terms and Conditions (collectively, this “Agreement”) are between the customer (“Customer”) and PowWow Energy, Inc. of 55 East Third Avenue, San Mateo CA 94401 (“Company”).

1. PRIVACY

- 1.1. Company is strongly committed to protecting Customer privacy. Company’s privacy policy is posted on Company’s website.

2. SERVICES

- 2.1. Unless Company and Customer enter another express, written agreement, this Agreement applies to the services to be provided by Company to Customer (the “Services”). The specific Services may be specified in Company’s online order form or order portion of a separately agreed written agreement (each, the “Order Form”).
- 2.2. As part of the registration process, Customer will provide information about farming assets, which the Customer warrants is accurate and true to the best of its knowledge.
- 2.3. Unless Customer and Company enter separate terms expressly providing for support and Customer is current in payment thereof, Customer is not entitled to support, though Company may provide limited support as a courtesy, as-is without warranty.

3. CUSTOMER RESTRICTIONS, WARRANTIES AND RESPONSIBILITIES

- 3.1. **Not Reverse Engineer:** Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services).
- 3.2. **Acceptable Use:** Customer represents, covenants, and warrants that Customer will use the Services only in compliance with and all applicable laws and regulations.
- 3.3. **Warranties:** Customer warrants to the Company that the Customer Data and use of the Customer Data by the Company in accordance with this Agreement will not (i) breach provisions of any law, statute or regulations; (ii) infringe on any Intellectual Property Rights or other legal rights or (iii) give rise to any cause of action against the Company.
- 3.4. **Responsibilities:** Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers, etc. as well as any equipment and services related to the farming assets monitored by the Services (collectively, “Equipment”). Without limiting the foregoing, Equipment includes, and Customer shall obtain, for Customer’s irrigation pumps “smart meters” that can be integrated with the Services as specified by Company, from which

Company can obtain data or Company's use in performing the Services. Customer shall appoint a representative who will be responsible for creating, managing and deleting accounts of the Customer. The Customer is also responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent. Customer is responsible for its representative's and other users' compliance with the terms of this Agreement.

4. COMPANY TECHNOLOGY AND DATA RIGHTS

- 4.1. **Company Technology:** Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Services or support, and (c) all intellectual property rights related to any of the foregoing (collectively, "Company Technology"). To the extent that Customer provides any feedback, suggestions or modifications to the Company Technology ("Feedback"), Customer hereby assigns and agrees to assign the Feedback to Company. No rights or licenses are granted except as expressly set forth herein.
- 4.2. **Utilities and Agencies:** Customer shall share with Company, and authorizes Customer's electric utility to share with the Company and for Company to obtain, Customer's electric utility data for Company's use in performing the Services. Further, if authorized in the Order Form or user configuration, Customer authorizes Company to share Customer's data with the applicable water agencies.
- 4.3. **Company Data Rights:** Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies including, without limitation, information arising from Customer's use of the System and data derived there from, and Company is free during and after the term to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. Subject to the foregoing, Customer retains its rights in any data it provides in connection with its use of the Service.

5. PAYMENT OF FEES

- 5.1. **Fees:** Customer will pay Company the applicable fees for the Services as provided in the Order Form.
- 5.2. **Payment Terms:** Customer will pay Company the fees for the Services within 30 days of the date of Company's invoice. Company reserves the right to change the fees or applicable charges and to institute new charges and fees at the end of the Initial Service Term or current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email).

5.3. **Late Payment:** Amounts not paid within the 30-day period above, are subject to a finance charge of 1.5% per month on any outstanding balance plus all expenses of collection and may result in immediate termination of Services.

6. TERM AND TERMINATION

6.1. **Term:** Subject to earlier termination as provided below, this Agreement is for the initial service term as specified in the Company's Order Form ("Initial Service Term"). If not otherwise specified by Company, the Initial Service Term shall be one (1) year and the Agreement shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the current term.

6.2. **Termination:** In addition to any other remedies it may have, either party may also terminate this Agreement if the other party fails to cure a material breach of any of the terms or conditions of this Agreement within five (5) days in the case of any non-payment or thirty (30) days in the case of any other breach. Upon any termination of the Agreement other than for Company's uncured material breach, Customer will pay in full for the Services up to and including the last day of the current Term.

6.3. **Consequences of Termination:** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, warranty disclaimers, and limitations of liability.

7. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in material compliance with Company's written specifications for such Services. Company's sole liability and Customer's sole remedy for any breach of Company's warranty shall be for Company to correct and redeliver the non-conforming Service in a manner that conforms with the warranty upon Customer's specific notice of the non-conformance, or in Company's discretion to refund the portion of fees paid by Customer applicable to the non-conforming Service. The warranty does not cover issues arising from abuse, neglect, unauthorized alteration or use, breach of the Agreement, failure to follow Company's instructions or third party products or services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

9. AMENDMENTS TO AGREEMENT

Company may make amendments to this Agreement by providing notice to Customer at least thirty (30) days prior to the effective date of the amendment. In the event that Customer does not agree to the amendment, Customer shall have the right to terminate the Agreement by providing written notice of non-termination prior to the effective date of the amendment, and in the event of such termination, Customer shall receive a refund of any unused fees prepaid for the portion of Term remaining after termination.

10. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Without limiting the foregoing, no inconsistent or additional terms or conditions in any document provided by Customer, including any purchase orders, RFPs, bills of lading or the like shall apply to this Agreement or the activities hereunder, and any such terms or conditions are hereby rejected. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys'

fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.