



CHANGE ORDER SUMMARY

Project:	LPC Microgrid Project	Change Order No.:	1
Owner:	Chabot-Las Positas Community College District	Date Issued:	3/13/2019
Contractor:	Growing Energy Labs	Project No.:	543001, PO #M160004
DSA File No.:		DSA Application No.:	

1.01	PCO #1	Reduce Scope to work performed and Billed to Jan 2019	Cost: \$-76,000	
	Direction	Reduce contract to amount billed to Jan 2019		
	Reason for Change:	GELI reduced scope	Supporting Docs	Email agreement
	Requested By:	GELI	Attachments	

Contract Adjustment

Original Contract Amount	\$ 200,200.00
Previously Approved Change Orders	\$ 0.00
Change Order No. 1	-\$76,000.00
Allowance Adjustment	
Current Contract Amount	\$ 124,200.00

Construction Mgr

Contractor

Owner

Bruce Rich

Daniel W. Wolfen

[Faint Signature]

Signature

Signature

Signature

Bruce Rich

DANIEL W. WOLFEN

Name

Name

Name

3/29/2019

March 25, 2019

Date

Date

Date

Geli stopped billing on all tasks in April, 2018. Geli will not bill the second half of the software license payment (\$50k). Geli will release claim on retained funds (~\$12k+).
Total CEC funds Geli will abandon: ~\$138,000+ (includes \$76k for tasks, \$50k for second half of software payment and ~\$12k+ of retained funds)
Total Geli received from CEC Grant: ~\$162,000

Geli to Complete:

- DCM with ongoing software maintenance for ten years as outlined in software license agreement (again, we will not bill for the second \$50k payment)
- Assist with Geli exit in regards to CEC
- Support Final Commissioning Report – Task 10
- Back-up Power*
- Support Final Report – Task 1.6

Geli to Not Complete:

- Chiller control
- Bruce's Microgrid – everything Bruce has requested in regards to an islanded microgrid other than what is outlined below for Back-up Power
- Measurement & Verification Report – Task 11
- Demand Response Modeling – Task 12
- Develop Microgrid Blueprint – Task 13
- Evaluation of Project Benefits – Task 14
- Technology/Knowledge Transfer Activities – Task 15

*Geli senses SEL-351 opens due to grid outage. Geli commands one UET system to go into grid forming mode (secondary system follows grid forming system or does nothing). Battery discharges until grid comes back or it is empty. Geli receives signal from SEL-351 that grid is back. Geli commands the one UET in grid forming mode to shut down, creating a dead-bus. SEL-351 senses when it is safe to close the breaker and then closes it. Normal operation is restored via Geli commanding both UET system to go into grid following mode. Caveat: UET needs to test their system in grid forming mode before Geli can attempt to control this functionality.



Chabot-Las Positas Community College District
 7600 Dublin Blvd, 3rd Floor - Dublin, CA 94568

Accounts Payable (A-L) 926-485-5221 (M-Z) 926-485-5220
 Fax 926-485-5271

PURCHASE ORDER

PO Number:	M160004
Issue Date:	09/02/15
Date Required:	06/30/16
Receiving	
Phone: 510-723-7270	Fax: 510-723-7271
Hours: 7:00am - 11:45am & 12:30pm - 3:30pm	

Vendor: GROWING ENERGY LABS INC
 657 MISSION STREET
 SUITE 600
 SAN FRANCISCO CA 94105

Instructions

- Purchase Order Number must appear on all invoices, packages, packing slip, and correspondence.
- Submit invoices - Attention: Accounts Payable at address above.
- Any changes to this Purchase Order must be approved before shipment.

Ship to

BRUCE RICH
 LAS POSITAS COLLEGE
 3000 CAMPUS HILL DRIVE
 LIVERMORE CA 94551

P.S.A.

FOB

Not Applicable

Terms

Net 30 Days

Description	Quantity	Unit Cost	Total Cost
<p>****THIS ORDER MAILED FOR VENDOR RECORDS ONLY****</p> <p>CONTRACT AGREEMENT - THIS ORDER IS ISSUED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OUTLINED IN THE CONTRACT AGREEMENT BETWEEN GELI AND THE CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT.</p> <p>-----</p> <p>NOTE: ANY QUESTIONS REGARDING THIS ORDER CONTACT: VICTORIA L. LAMICA, CONTRACT MANAGER, FACILITIES PLANNING & MANAGEMENT (925) 485-5233 E-MAIL: vlamica@clpccd.org</p> <p>TO PROVIDE PROFESSIONAL SERVICES FOR THE CENTRAL PLANT MICRO GRID PROJECT, LAS POSITAS COLLEGE</p>	1.00 NTE	200,200.000	200,200.00

Buyer: Annie Harris

TOTAL: CONTINUED

Account Codes
 543001-10000-6120-710000 200,200.00

VENDOR INFORMATION:
 ID: W10766273
 Phone:
 Fax:
 Reqn: R1600309

Authorized Signature



Chabot-Las Positas Community College District
 7600 Dublin Blvd, 3rd Floor - Dublin, CA 94568

Accounts Payable (A-L) 925-485-5221 (M-Z) 925-485-5220
 Fax 925-485-5271

PURCHASE ORDER

PO Number:	M160004
Issue Date:	09/02/15
Date Required:	06/30/16

Vendor: **GROWING ENERGY LABS INC**
 657 MISSION STREET
 SUITE 600
 SAN FRANCISCO CA 94105

Receiving
 Phone: 610-723-7270 Fax: 610-723-7271
 Hours: 7:00am - 11:45am & 12:30pm - 3:30pm

Instructions

- Purchase Order Number must appear on all invoices, packages, packing slip, and correspondence.
- Submit Invoices - Attention: Accounts Payable at address above.
- Any changes to this Purchase Order must be approved before shipment.

Ship to

BRUCE RICH
LAS POSITAS COLLEGE
3000 CAMPUS HILL DRIVE
LIVERMORE CA 94551

FOB

Not Applicable

Terms

Net 30 Days

Description	Quantity	Unit Cost	Total Cost
		ADDL CHARGES: .00 TOTAL TAXES: .00	

Buyer: Annie Harris

TOTAL: 200,200.00

Account Codes
 543001-10000-6120-710000 200,200.00

VENDOR INFORMATION:
 ID: W10766273
 Phone:
 Fax:
 Reqn: R1600309

Authorized Signature



	SATA Connectors:	2 connectors
	LAN Controller:	Realtek RT8111G-CG
codec	Audio Controller:	Realtek ALC662 5.1 channel HD
	Onboard Connectors:	3 USB 2.0 via 2 pin headers 2 SATA connectors 1 Front panel audio pin header 1 S/PDIF header 1 Front panel pin header 1 Fan pin header 1 LPT pin header 1 LVDS connector (24-bit, dual
channel)		2 RS-232 COM pin headers
(AT/Everex)		24-pin ATX connector
	Included Power Supply:	250 W switching power supply
	64-bit:	Yes
	System Monitoring:	Watchdog Timer
	Operating Temperature Range:	0°C ~ 50°C
	Dimensions (WxHxD):	1U 482.6 x 44.4 x 257.05 mm 19" x 1.75" x 10.1"
	Case Material:	Steel
	Mounting:	Wall-mount Rackmount
	Included Accessories:	Power cord
		Rubber feet (6)

4. One (1) APC Smart-UPS SC 450VA 120V - 1U Rackmount/Tower
5. Ten (10) year Equipment warranty
6. Ten (10) year Software Maintenance Plan as outlined in **Exhibit C**.

TOTAL COST: \$100,000

PAYMENT SCHEDULE:

- 50% due upon execution of this Agreement. Customer will issue a P.O. in the amount of \$100,000. Geli will issue an invoice to Customer in the amount of \$50,000 which will be submitted to the California Energy Commission (“CEC”) for reimbursement. Customer will pay Geli \$50,000 within five (5) days of receiving funds from the CEC.
- 50% due upon successful integration of the Geli Jar Console and Application Platform. Upon confirmation from Customer of the successful integration of the Geli Jar Console and Application Platform, Geli will issue an invoice to Customer in the amount of \$50,000 which will be submitted to the CEC for reimbursement.



Customer will pay Geli \$50,000 within five (5) days of receiving funds from the CEC.

CUSTOMER RESPONSIBILITIES:

Provide ethernet cabling and connectivity from all microgrid system devices into the Customer network to which the Geli Jar will be connected via a Customer network switch. Provide internet connectivity for the Geli Jar Console.

EXHIBIT B

SERVICE LEVEL AGREEMENT

1. Definitions. For the purposes of this Exhibit, the following definitions shall apply:



1.1. **“Availability”** or **“Available”** means that the local Application Platform is available and properly functioning for use in accordance with this Agreement. Availability shall be calculated on an annual basis, which shall be expressed as a percentage reflecting the following calculation: $\text{Availability \%} = [1 - \text{Downtime}/(\text{Maximum Available Time minus Scheduled Maintenance})] \times 100$.

1.2. **“Downtime”** means the total number of minutes in a given year that the Application Platform is not operational in accordance with the terms of this Agreement. Downtime may be reported, and acted upon by Customer via external or internal monitoring, as described below. Downtimes due to power grid outages, Customer Site Internet failure, or Customer Site non-response for duration of event, are not additive to downtime calculations.

1.3. **“Maximum Available Time”** means the total number of minutes in a given year. The formula for this is: $\text{number of days in the applicable year} \times 1440$.

1.4. **“Scheduled Maintenance”** means the total number of minutes in a given year for a planned, defined, and scheduled period of time during which Geli performs routine maintenance on the Application Platform. Scheduled Maintenance may commence only between the hours of 3 a.m. and 5 a.m. Pacific time, and will not exceed (i) two (2) hours in duration for any individual instance and (ii) sixteen (16) hours in the aggregate during any calendar month.

2. Uptime Requirement. Company will ensure that the Application Platform will be Available at least 94% of the time, measured in aggregate, over each calendar year during the Term, excluding Scheduled Maintenance (**“Uptime Requirement”**).

3. Service Credit. In the event that Company fails to fulfill its Uptime Requirement, it will compensate Customer by issuing a credit for an extension of the Term. The credit shall be calculated based on the table below.

<i>Annual Availability %</i>	<i>Term Extension</i>
Below 94%	2 months
93.9-90.0%	5 months



<i>Annual Availability %</i>	<i>Term Extension</i>
89.9-0%	1 year

4. Software Maintenance and Problem Escalation.

4.1. Introduction. This section describes the process for handling technical support requests, incident management and incident resolution by Geli.

In the event a defect, bug, or other issue affecting the Application Platform is detected by either Geli or Customer, the issue will be categorized as an incident pursuant to the criteria below. Each incident will be communicated to the defined contacts and resolved as defined in the table below.

4.2. Priority Level Definitions and Assignments. Each incident will be assigned a priority level based on the criteria listed below.

4.2.1. Severity Level 1 (“Critical”). A Severity Level 1 problem means any of the following:

- A complete outage of a critical service
- A recurring temporary outage of a critical service
- Inability to provision a service
- Loss of data
- Inability to service user technical support requests

4.2.2. Severity Level 2 (“Serious”). A Severity Level 2 problem means any of the following:

- A significant degradation of the service
- Results that are materially different from those described in the product definition.
- Serious failure of the services that causes material inconvenience to Customer, its Affiliates and/or their users

4.2.3. Severity Level 3 (“Moderate”). A Severity Level 3 problem means any of the following:



- A minor degradation of the service
- Recent modifications to the system that cause services to operate in a way that is materially different from those described in the product definition for non-essential features.
- A failure of the services that causes material inconvenience to Customer, its Affiliates, and/or their users

4.2.4. Severity Level 4 (“Minor”). A Severity Level 4 problem means any of the following:

- A small system delay, but no loss of data was experienced or a minor application error occurred
- Platform Services do not operate strictly according to the documentation and/or technical requirements

4.2.5. Definitions: For purposes of the table on the next page, the following terms shall have the meanings set forth below:

- **“Final Resolution”** means a permanent fix that resolves the issue.
- **“Initial Response”** means the first contact provided to Customer by Company. This response may be in the form of an email message or, if email is unavailable, a documented phone call, or documented personal acknowledgement, and will normally contain the service request number for tracking purposes.
- **“Update Interval”** means any communication from Company support or product team to Customer where the status and plan of action for the service request is communicated. The purpose of these updates is to keep Customer informed of the progress being made to resolve the problem reported through the incident resolution request, to gather additional details for support or troubleshooting purposes, or to communicate a resolution of the problem.
- **“Workaround”** means a temporary fix that resolves the issue.



Standard service hours: Monday – Friday 8:00 a.m. - 6:00 p.m. PST

(For after-hours emergencies use the support number listed below)

<i>Severity Level</i>	<i>Initial Response</i>	<i>Update Interval</i>	<i>Resolution</i>
Critical (Level 1)	Within 30 minutes after Customer notifies Geli of the problem or Geli otherwise becomes aware of the problem	Every hour	<ul style="list-style-type: none"> • Reasonable Workaround within 1 hour • Final Resolution within 8 hours
Serious (Level 2)	Within 2 hours after Customer notifies Geli of the problem or Geli otherwise becomes aware of the problem	Every 3 hours	<ul style="list-style-type: none"> • Reasonable Workaround within 1 day • Final Resolution within 3 days
Moderate (Level 3)	Within 1 day after Customer notifies Geli of the problem or Geli otherwise becomes aware of the problem	Every day	<ul style="list-style-type: none"> • Reasonable Workaround within 2 business days • Final Resolution within 5 business days
Minor (Level 4)	Within 1 day after Customer notifies Geli of the problem or Geli otherwise becomes aware of the problem	N/A	



Contact Table:

Company		Customer	
Phone/email		Phone/email	
Email	support@geli.net		
Geli Technical Support	415-857-4354 – normal business hours 888-518-5809 – after hours		
Account Manager	415-275-2923		
Office	415-857-4354		

When escalating an incident, the notifying party will provide the other party's contact with the following information:

1. The particular service(s) or incident(s) that is (are) experiencing a problem;
2. An email notification address or alias to facilitate communication;
3. All relevant information regarding the problem, including the steps that the notifying party has taken to investigate the cause of the problem prior to notification and, if necessary, the proper notifying party contact to assist in the resolution of the problem; and
4. Other pertinent contact information, which will include but not be limited to, a mobile number for the authorized representative.



EXHIBIT C

SOFTWARE MAINTENANCE PLAN

Term: The term of the Software Maintenance Plan (“Plan”) is ten (10) years. The Plan can be extended year-to-year by paying an Annual Renewal Fee as outlined below.

Scope of Services: Geli shall operate, maintain and manage the Software on behalf of Customer (“**Support**”). Support shall include the following:

1. Install all Geli software updates and patches as available including updates to any anti-virus software.
2. Notifications as required under the Service Level Agreement contained in Exhibit B of the Agreement.
3. Dispatch of Geli or contracted maintenance provider as authorized
4. Confirm resolution of Alerts, Warnings, and Faults.
5. Provide web-based access to performance data.
6. Deliver regular reports (monthly, bi-annual, annual) on system usage, operation, economic performance, and health.
7. Perform hardware maintenance on hardware provided by Geli, according to recommended schedule of manufacturers.
8. Geli shall provide to Customer telephone support (“Telephone Support Service”). Telephone Support Service shall include telephone and research time performed by Geli Telephone Support Service staff.



- Excluded Services:** Geli shall not be obligated to provide Support with respect to any modifications to the Software made by Customer or to any computer program incorporating all or any part of the Software, if such computer program was provided by Customer or a third party and was not approved for use for the project by Geli. Software uptime shall be governed by the Geli Service Level Agreement contained in **Exhibit B**.
- Malfunctions:** See Service Level Agreement in **Exhibit B** above.
- Notifications:** Geli shall notify Customer at least 24 hours in advance whenever any maintenance modifications or enhancement upgrades will take place.
- Annual Renewal Fee:** Customer may extend the Plan on an annual basis by paying Geli **\$4,125 per year**. Customer will be notified by Geli at least ninety (90) days before the expiration of the Term. Customer will notify Geli at least thirty (30) days in advance of the Term expiration of their intent to extend the Plan. Geli will invoice the Customer for the Renewal Fee.
- Access:** Geli and Customer and their respective agents and representatives shall have 24 hour-a-day access to any documents, materials and records and accounts relating to the microgrid system operations for purposes of inspection and review.



**SOFTWARE LICENSE AGREEMENT
FOR GROWING ENERGY LABS, INC.**

Geli Control #: GELI-0719

THIS SOFTWARE LICENSE AGREEMENT (“Agreement”),

BETWEEN

GROWING ENERGY LABS, INC. (“Geli”) having offices at 657 Mission Street, Suite 600, San Francisco, California 94105

AND

(“Client” or “Customer”): Chabot-Las Positas Community College District

Having offices at: 3000 Campus Hill Drive, Livermore, CA, 94551

(each individually a “Party” and together the “Parties”)

AS OF:

March 1, 2017 *DMZ*
March 1, 2016 (“Effective Date”)

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Appendix A – Software License

Exhibit A – Customer Order

Exhibit B – Service Level Agreement

Exhibit C – Software Maintenance Plan

I. DEFINITIONS

- a. **“Application Platform”** means Geli’s proprietary application software and/or website, including all widgets, applications, modules, functions, features, or Equipment identified in **Exhibit A**, or otherwise generally made available by Geli to its customers and/or affiliates, and all technology resources and infrastructure (e.g., hardware, third party software, etc.) supporting the Platform Services.
- b. **“Equipment”** means the local controller (Geli Jar computer node) which hosts and runs the Geli Software.
- c. **“Geli Materials”** means the software, technology and other Intellectual Property developed by Geli or its licensors (except for any Customer Materials) used to provide the Platform Services in accordance with this Agreement.
- d. **“Documentation”** means Geli’s user guides and manuals relating to the Platform Services and Application Platform, including online and in-app help, as updated and amended from time to time.
- e. **“Customer Data”** shall mean all personally identifiable information collected by the Geli for purposes of communicating with Customer or providing Customer’s designated agents with access to the Application Platform or the Platform Services. Customer Data shall also include all data and information collected by Geli from Customer’s operations and in the course of performing the Platform Services herein and which does not identify individual users.
- f. **“Customer Materials”** means Customer’s pre-existing proprietary materials, information and/or data (including Customer Data) that may be incorporated within, contained in and/or used or processed in connection with the Platform Services or the Application Platform under the terms of this Agreement.
- g. **“Intellectual Property”** means all works of authorship, algorithms, application programming interfaces (APIs), apparatus, concepts, Confidential Information, data, databases and data collections, deliverables, designs, diagrams, documentation, drawings, flow charts, formulae, ideas and inventions (whether or



not trademarked, protected by copyright, patentable or reduced to practice), know-how, materials, marketing and development plans, marks (including brand names, product names, logos and slogans), methods, models, procedures, processes, schematics, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, tools, uniform resource identifiers, user interfaces, works of authorship, and other forms of technology.

- h. **“Intellectual Property Rights”** means all past, present, and future rights in and to any Intellectual Property, which may exist or be created under the laws of any jurisdiction in the world including, without limitation: (i) rights associated with works of authorship, including exclusive exploitation rights, and copyrights; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patent and industrial property rights; (v) other proprietary rights in Intellectual Property of every kind and nature; and (vi) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (i) through (v) of this sentence.
- i. **“Order”** means what is represented in **Exhibit A** and a document pursuant to which Customer orders further Platform Services or rights to the Application Platform from time to time during the Term.
- j. **“Platform Services”** means the services that are ordered by Customer under an Order, including (i) limited access and use rights to the Application Platform, (ii) hosting services, (iii) support services, and (iv) any other similar generally applicable services that Geli provides to its customers in accordance with the Documentation.
- k. **“Service Level Agreement”** means the Uptime Guarantees, availability of credits, and severity classification as set forth in **Exhibit B**.
- l. **“Software”** means (a) all the contents of the computer files provided under this Agreement, including but not limited to (i) Geli or third party computer information or software and (ii) Documentation and (b) modified versions, additions, and copies of the Application Platform.
- m. **“Customer Proprietary Software”** means proprietary computer files or other electronic information, of Customer, not developed pursuant to or in preparation of this Agreement.

II. TERMINATION

- a. Termination for Breach. Either Party may terminate this Agreement if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days after the date that it receives written notice of such breach.
- b. Termination for Insolvency or Cessation of Business. The Party which has not filed bankruptcy or ceased to conduct business may terminate this Agreement



upon written notice if the other Party has filed for bankruptcy or appointed a liquidator or receiver to distribute the Party's assets in connection with insolvency or such Party ceases to carry on business.

- c. Effects of Termination. Except as expressly set forth otherwise in this Agreement, upon termination of this Agreement: (i) the licenses and rights granted hereunder will be terminated and Customer will promptly cease using the Application Platform, Documentation, and Geli's Confidential Information, (ii) the Application Platform and associated Software Maintenance Plan will cease to be accessible to Customer or to its users, (iii) upon the disclosing Party's written request, the receiving Party will return all Confidential Information to the disclosing Party within thirty (30) days, and (iv) Customer will pay, or Geli will refund (e.g., with respect to pre-paid amounts and credits) as applicable, all accrued Application Platform Fees and Software Maintenance Plan Fees within thirty (30) days of the date termination occurred. Those provisions which are intended to survive termination shall remain in full force and effect.

III. RESERVED

IV. PLATFORM SERVICES

- a. Provision of Platform Services and Application Platform. Subject to the provisions of this Agreement, Geli will make available to Customer, on a limited, revocable, non-exclusive and non-transferable basis (except as permitted herein), the right and license to use the Platform Services, the Application Platform, and Documentation in accordance with the applicable Order(s), Documentation, and other provisions of this Agreement. No other rights are granted to Customer except as otherwise provided for herein. Geli will provide such Uptime guarantees as set forth in the Service Level Agreement attached hereto as **Exhibit B**. As outlined in the Software Maintenance Plan attached hereto as **Exhibit C**, Geli will be responsible for providing upgrades, enhancements, maintenance, reporting, asset management and such other services as described in the Software Maintenance Plan. Customer will be responsible for providing all necessary hardware specified in the Order, except as expressly provided otherwise in the applicable Order or in this Agreement.
- b. Access and Use Rights. Customer will be responsible for providing its own internet access to the Application Platform, where applicable. Geli may specify reasonable procedures in the Documentation according to which Customer may establish and obtain such access to and use of the features and functions of the Platform Services and Application Platform through the internet, including, without limitation, provision of any access codes such as an access key to any module with login details, access to websites, connectivity standards or protocols, or any other relevant procedures.



- c. Orders. The initial Order is attached hereto as **Exhibit A**. If Customer desires to access or use additional Platform Services or Application Platform modules as applicable in the initial Order or any subsequent Order, the authorized representatives of the Parties will execute a new Order with both Parties' written consent. Upon the Parties' written acceptance of the new Order, such new Order will be effective. All Orders are subject to and hereby incorporate all exhibits and the terms of this Agreement.
- d. Limitations on Use. Except as otherwise provided in this Agreement, Customer will not: (i) sell, rent, lease, sublicense or otherwise transfer or distribute the Application Platform, Geli Materials, Confidential Information, or Documentation or any copies of the Application Platform or Documentation except to Customer's agents strictly on a need-to-know basis; (ii) modify, translate, reverse engineer, decompile or disassemble the Application Platform; (iii) create or prepare derivative works based upon the Application Platform; (iv) create any copy of or "mirror" the Application Platform; or (v) alter, destroy or otherwise remove any proprietary notices or labels on or embedded within the Application Platform or Documentation.

V. RESERVED

VI. SERVICE LEVEL REQUIREMENTS

Service Levels. The Software will meet the minimum service level standards set out in **Exhibit B** ("**Service Level Agreement**"). In the event the terms of the Service Level Agreement are not met, Customer will promptly notify Geli to take corrective action.

VII. RESERVED

VIII. FEES

- a. Fees. Customer will pay to Geli **\$100,000** as set forth in **Exhibit A** for the provision and use of the Platform Services and Application Platform subject to the other provisions of this Section VIII.
- b. Payments to Geli. 50% due upon execution of this Agreement. Customer will issue a P.O. in the amount of \$100,000. Geli will issue an invoice to Customer in the amount of \$50,000 which will be submitted to the California Energy Commission ("**CEC**") for reimbursement. Customer will pay Geli \$50,000 within five (5) days of receiving funds from the CEC.



50% due upon successful integration of the Geli Jar Console and Application Platform. Upon confirmation from Customer of the successful integration of the Geli Jar Console and Application Platform, Geli will issue an invoice to Customer in the amount of \$50,000 which will be submitted to the CEC for reimbursement. Customer will pay Geli \$50,000 within five (5) days of receiving funds from the CEC.

IX. REPRESENTATIONS AND WARRANTIES

- a. Generally. Each Party represents and warrants that:
 - i. It is a legal entity duly organized, validly existing and in good standing;
 - ii. It has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; and
 - iii. Its performance of its obligations under this Agreement will not knowingly violate any other agreement between such Party and any third party.
- b. By Geli. Geli further represents and warrants that:
 - i. The Platform Services, the Application Platform, the Geli Materials (including the use thereof, but excluding any Customer Materials contained therein) will not knowingly violate or knowingly infringe any Intellectual Property Rights or any rights of privacy or publicity;
 - ii. Geli will not knowingly violate any law or regulation as a result of performing its obligations under this Agreement;
 - iii. All Geli personnel have the legal right to provide the Platform Services;
 - iv. the Platform Services will be performed in accordance with industry standards, and with a degree of care, skill and expertise as is required for the provision of services of a similar nature; and,
 - v. Geli's Equipment will perform for its intended purpose for five (5) years from the microgrid system commissioning date. Geli will replace the Equipment after five (5) years. In the event of failure of the Equipment during the initial five (5) year period or the second five (5) year period, Geli will provide replacement Equipment.
 - vi. Geli will install and maintain anti-virus software on the Geli Equipment.



- c. By Customer. Customer further represents and warrants that:
- i. Customer is authorized to grant the rights herein granted;
 - ii. Customer owns and/or has the right to use any and all Customer Materials, including any Customer Data, including without limitation, all copyrights, trademarks and other proprietary rights in and to such materials;
 - iii. Customer Materials will not violate or infringe any Intellectual Property Rights or any rights of privacy or publicity of any third party;
 - iv. Customer is the owner of or has all necessary licences, certificates, authorities and consents in respect of Customer Proprietary Software and other intellectual property rights required for the purposes of enabling Geli to provide all requirements under this Agreement;
 - v. Customer is in compliance with the terms and conditions of all licenses, certificates, authorizations and consents required for the provision of the Platform Services, including but not limited to third party licences, certificates, authorizations and consents; and
 - vi. Customer will use the Platform Services in accordance with the terms and conditions hereof and applicable laws and in a manner that, will not infringe or misappropriate the Intellectual Property Rights held by any third party;
 - vii. Customer will take industry standard precautions to prevent the introduction of any computer virus or other contamination, whether knowingly or not, onto any of Geli's equipment or systems; and
 - viii. Customer shall be in compliance with all applicable laws, including but not limited to all laws governing the collection and dissemination of Customer Data.
- d. Other Warranties. Except as expressly provided in this Section 9, **GELI PROVIDES NO OTHER IMPLIED OR EXPRESS WARRANTIES, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, OPERATION WITHOUT DELAY OR ERRORS, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.** Any warranties given by Geli extend solely to Customer and are not transferable.
- e. Intellectual Property Claims and Breach of Warranty. In the event that a third party initiates meritorious litigation or arbitration against Geli or Customer based on an



infringement claim with respect to Intellectual Property or other rights of such third party, or in the event that Customer claims that the Services, the Application Platform and/or the Geli Documentation fail to comply with the warranties in Section IX(b) (i), (ii) and (iii), and such infringement claim is not otherwise due to Customer's actions, Geli will promptly, at its sole option, either:

- i. Obtain for Customer the right to continue using the Platform Services, the Application Platform and/or the Geli Documentation; or
- ii. Replace or modify the Platform Services, the Application Platform and/or the Geli Documentation so that it no longer violates the applicable warranty above, as long as the Application Platform provides substantially the same functionality; or
- iii. Terminate the Platform Services and provide pro rata refunds to Customer based on any Fees paid for any unused portion of the Platform Services. Except as stated in Section XIII, the foregoing shall be the sole and exclusive remedy for Customer with respect to the warranties in subsection IX (b) (i), (ii) and (iii).

X. INTELLECTUAL PROPERTY RIGHTS

- a. Ownership Rights. Except for the license and other rights granted to Customer in this Agreement, Geli retains all right, title and interest in and to the Application Platform, Documentation, Geli Materials, and Geli's Confidential Information, including all Geli Intellectual Property Rights therein. Nothing in this Agreement shall effect a transfer of copyright or any other Intellectual Property Rights from Geli to Customer. The Geli Materials and Geli's Confidential Information shall not be used or exploited by Customer without Geli's prior written consent or as otherwise expressly authorized in this Agreement.
- b. Ownership of Customer Materials; License of Customer Data to Geli. Geli acknowledges and agrees that, as between the Parties, Customer exclusively owns and shall retain all right, title, and interest in and to Customer's Confidential Information, including all Intellectual Property Rights therein, irrespective of whether such Confidential Information and/or Customer Materials were stored or processed through or in the Platform Services or Application Platform. The Customer Materials and Customer's Confidential Information shall not be used or exploited by Geli without Customer's prior written consent or as otherwise expressly authorized in this Agreement. Geli shall have no right to use or exploit the Customer Materials except for the purpose of providing Customer the Platform Services hereunder; provided however, Customer grants Geli a royalty-free license



to aggregate and analyze anonymized data gathered from Customer's electrical power or energy system, as well as other information gathered from Customer during the course of performing Platform Services.

- c. Press Releases and Customer Marks. Each Party hereto grants to the other Party a non-exclusive, revocable, worldwide, non-sublicensable and limited license to use such trademarks and service marks for the sole purpose of referencing the business relationship between the Parties as well as any press release which may be mutually agreed upon by the Parties. In addition, Customer permits Geli to reference Customer on its website or in its marketing materials. Each Party shall retain sole and exclusive ownership of its respective trademarks.
- d. Intellectual Property Rights on Third Party Termination. Upon termination or cancellation, for any reason arising, of any licence or right of use or similar entitlement in relation to Software and other Intellectual Property owned by third parties which is used by Geli in the provision of Platform Services, Geli shall have the same rights and entitlements to the return and/or deletion (expunging) of such third party Software and Intellectual Property.
- e. No Restrictions on Further Development by Geli. Nothing contained in or under this Agreement (including any Order) shall restrict Geli's use of ideas, concepts, know-how, methods or techniques developed in relation to the Platform Services.

XI. CONFIDENTIALITY AND NONDISCLOSURE

- a. Confidential Information. For purposes of this Agreement, the term "**Confidential Information**" shall include (i) the terms of this Agreement (including the terms set forth in any Order) (ii) any personally identifiable information; and (iii) any other non-public information relating to the business of the disclosing Party obtained by virtue of this Agreement that either is marked or identified as confidential or that would be reasonably understood to be of a confidential nature, which may include, without limitation with respect to Confidential Information of Customer and Geli: all non-public business information pertaining to Customer, including, but not limited to, information relating to Customer's and Geli's planned or existing computer systems and systems architecture, including computer hardware, computer software, source code, object code, documentation, methods of processing and operational methods; revenue, organizational structure and restructuring, new business initiatives and Customer and Geli finances; Customer's and Geli's products and services, product designs, and how such products are administered and managed; and any confidential information of third parties with which Customer and Geli conducts business. Without limiting the foregoing and for the avoidance of doubt, the Customer Materials shall be deemed Confidential Information of Customer and the Geli Materials shall be deemed Confidential



Information of Geli. Notwithstanding the foregoing, Confidential Information will not include information that:

- i. Is now or subsequently becomes generally available to the public through no wrongful act of the receiving Party; or,
 - ii. The receiving Party can demonstrate was rightfully in its possession prior to disclosure by the disclosing Party.
- b. Restrictions. Each receiving Party agrees that, during the Term of this Agreement and for two (2) years thereafter:
- i. It will keep all Confidential Information of the disclosing Party in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure;
 - ii. It will not, directly or indirectly, disclose any Confidential Information of the disclosing Party to anyone outside of the receiving Party, except with the prior written consent of the disclosing Party; and
 - iii. It will not make use of any Confidential Information of the disclosing Party for its own purposes (except as necessary to exercise its rights or fulfill its obligations hereunder) or for the benefit of anyone other than the disclosing Party.

Each receiving Party will be deemed to have met its obligations hereunder if it treats the disclosing Party's Confidential Information with the same degree of care as it treats its own sensitive business information of like kind, but in no event shall the receiving Party use less than commercially reasonable efforts to prevent unauthorized disclosure of such Confidential Information. Upon termination or expiration of this Agreement, or at any earlier time that the disclosing Party shall so request, the receiving Party will deliver promptly to the disclosing Party, or, at the disclosing Party's option, the receiving Party will destroy, all Confidential Information of the disclosing Party obtained hereunder (and all copies thereof) that the receiving Party may then possess or have under its control. Notwithstanding the foregoing, the receiving Party may retain Confidential Information for legal compliance purposes.

- c. Permitted Disclosure of Confidential Information. Notwithstanding anything in this Agreement to the contrary, a receiving Party may disclose the Confidential Information of the disclosing Party to (i) the receiving Party's personnel, agents and advisors (including legal and financial advisors) who have a need to know such information in connection with the exercise of its rights or the fulfillment of its obligations hereunder and (ii) actual and potential acquirers of the receiving Party (including accounting, legal and financial advisors), who, in the case of the



foregoing clauses (i) and (ii) are obligated to keep such information confidential. Each receiving Party will instruct its personnel and/or agents, as applicable, as to their obligations under this Agreement. A receiving Party may disclose Confidential Information of the disclosing Party if such disclosure is required by law, court order or regulation; provided, however, that such receiving Party will notify the disclosing Party in writing in advance of such disclosure, and will provide the disclosing Party with copies of any related information so that the disclosing Party may take appropriate action to protect its Confidential Information.

XII. SUBCONTRACTORS, AFFILIATES AND ASSIGNMENT

- a. Geli may appoint subcontractors to supply Platform Services or any part thereof.
- b. Notwithstanding the appointment of any subcontractor, Geli shall remain liable to Customer under this Agreement for the supply of and provision of Platform Services.
- c. Subcontractors are subject to the same duties of confidence in respect of Customer's Confidential Information as Geli is under this Agreement.

XIII. INDEMNIFICATION AND LIMITATION OF LIABILITY

- a. Scope of Indemnification. Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its respective present and former officers, members, member institutions, directors, employees, agents, successors, heirs and assigns (collectively, the "**Indemnified Party**") from and against any and all losses, liabilities, claims, costs, damages and expenses (including, without limitation, reasonable outside attorneys' fees, disbursements and administrative or court costs) paid or incurred in connection with any claim by any third party arising out of or resulting from:
 - i. Any breach or alleged breach by the Indemnifying Party of its obligations, representations or warranties under this Agreement, or any willful, intentional or negligent action or failure to act by the Indemnifying Party or any of Parties' respective personnel under this Agreement;
 - ii. Personal injury or property damage caused by the fault or negligence of the Indemnifying Party or its personnel;
 - iii. In the case of Customer as the Indemnifying Party, any Customer Data, the Customer Materials or Geli's use of the Customer Materials, including without limitation, any claim of misappropriation of Confidential Information or a claim that the Customer Materials violate any third party right, including a right of privacy, Intellectual Property, or publicity;



- iv. In the case of Geli as the Indemnifying Party, any claim that any Geli Personnel is a Customer employee and not Geli's employee or an independent contractor;
- v. In the case of a claim involving Intellectual property the provisions of Section XIII(b) shall control.

Parties' indemnification obligation under this Section XIII(a) shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for such Indemnifying Party under workers' compensation acts, disability benefit acts or other employee benefit acts or by the provisions of any insurance.

- b. Intellectual Property Indemnification. Customer and Geli each agree to indemnify, defend, and hold the other party harmless against any action to the extent that such action is based on a claim that any Intellectual Property provided by the indemnifying Party or the Confidential Information provided by the indemnifying Party infringes any third party rights.
 - i. The provisions of this Section XIII(b) shall not extend to any Intellectual Property or Confidential Information which has been modified (other than by the Indemnifying Party); any claim in connection with outdated Intellectual Property when Customer has been provided with the latest version of the Application Platform; or, any Intellectual Property which has been used incorrectly and not for its intended use or has been utilized in conjunction with any other software or confidential information not supplied by the Indemnifying Party.
 - ii. Geli shall have no liability to Customer under this Agreement for any alleged or actual infringement arising out of (a) use of Intellectual Property in connection or in combination with (i) applications, or (ii) equipment, devices, services or software not provided by Geli; (b) use of Intellectual Property in a manner for which it was not designed; (c) any modification of the Intellectual Property by anyone other than Geli; (d) infringement claims as a result of Customer's designs, specifications, guidelines or instructions; or (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of alternatives or modifications that would have avoided the alleged infringement.
 - iii. Geli shall not be responsible for any compromise or settlement made by Customer without Geli's prior written consent.



- c. Notification of Indemnification. The Indemnified Party will give prompt written notice to the Indemnifying Party of any claim against which it seeks to be indemnified pursuant to this Section XIII. (The failure by the Indemnified Party to give such notice will not relieve the Indemnifying Party of its obligations under this Section XIII, except to the extent that such failure results in irrevocable harm to Indemnifying Party's defense as a result of the failure to give notice). The Indemnified Party will allow the Indemnifying Party to direct the defense and settlement of any such claim, with counsel of the Indemnifying Party's choosing, and will provide the Indemnifying Party, at the Indemnifying Party's expense, with information and assistance that are reasonably necessary for the defense and settlement of the claim. The Indemnified Party will have the right to retain separate counsel and to participate in (but not control) any such action, but the fees and expenses of such counsel will be at the expense of the Indemnified Party unless the Indemnifying Party has not in fact retained counsel to assume the defense of the action within the time necessary to defend the actions following receipt of the notice given pursuant to this Section XIII(c), in each of which cases the reasonable fees and expenses of such outside counsel will be at the expense of the Indemnifying Party.

The Indemnifying Party will not be liable for any settlement of an action effected without its written consent, nor will the Indemnifying Party settle any such action without the written consent of the Indemnified Party. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party a release from all liability with respect to the claim.

- d. Limitation of Liability. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION XIII AND FOR DAMAGES ARISING OUT OF BREACHES OF SECTION XI, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION OR ARISING OUT OF BREACH OF CONTRACT, TORT OR ANY OTHER CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION XIII AND FOR LIABILITIES ARISING OUT OF A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION XI IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY CUSTOMER DURING THE LAST TWELVE (12) MONTHS. IN NO



EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THE INDEMNIFICATION OBLIGATIONS EXCEED THE AMOUNT OF \$2,000,000 FOR ANY THIRD PARTY INTELLECTUAL PROPERTY CLAIMS. NOTWITHSTANDING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY'S LIABILITY FOR BREACH UNDER THIS AGREEMENT EXCEED THE ACTUAL DIRECT DAMAGES SUSTAINED BY THE OTHER PARTY BY REASON OF SUCH BREACH. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

XIV. EXCLUSIONS

- a. In addition to any exclusion set out in any Order, and unless set forth in the Maintenance Agreement, Geli is not liable for and the Platform Services under the terms of this Agreement do not include the provision of services, repairs or replacements necessitated by or related to the following force majeure events:
 - i. Damage caused by fluctuation of electrical power, accident, fire, water, lightning or other act of God;
 - ii. Damage caused by third party acts;
 - iii. Damage caused by abnormal operating conditions such as high or low temperatures or humidity or dust levels which are beyond the published environmental specifications of the Equipment as may be provided by Geli;
 - iv. The connection to the internet or of ancillary equipment, not supplied by Geli, or not approved by the Geli;
 - v. The negligent use, abuse or misuse by Customer (or Customer's representatives, employees, agents or subcontractors) of the Platform Services, Equipment or Software;
 - vi. Electrical work, not performed by Geli or its subcontractors;
 - vii. Where Geli uses the Internet, a website or telecommunication link to provide some of the Platform Services, Geli shall not be liable for failing to provide such services to the extent such failure is due to the failure of the whole or part of the Internet or telecommunication link;
 - viii. The relocation of Equipment, unless relocated by Geli or its subcontractors;
 - ix. Modifications, repairs or replacements or attempted modifications, repairs or replacements not performed by Geli or its sub-contractors, or not approved by Geli in writing prior



to such modifications, repairs or replacements being performed or attempted by another party, including Customer;

- x. The refurbishment of any Equipment; or,
- xi. The restoration of lost data from any Equipment or Software, or from any ancillary equipment connected to or using the Equipment or Software.

In the event that one of the aforementioned force majeure events occurs, Geli will provide a quote to the Customer within two (2) business days and the cost of the replacement equipment and installation to the Customer shall be no greater than \$1,500 per occurrence. Once the Customer pays Geli for the replacement equipment, the timeline for replacing the equipment shall not exceed one calendar week.

XV. GENERAL

- a. Notice. Any notices provided for in this Agreement shall be given in writing and transmitted by personal delivery of prepaid first-class U.S. mail or by facsimile, addressed as follows: if to Geli, to the office listed above; if to Customer, at the address of record stated on any Order (“Customer Address”).
- b. Assignment. Neither Party may assign or delegate its rights, duties or obligations under this Agreement. Notwithstanding the foregoing, Parties may assign this Agreement in its entirety or all of its rights and obligations hereunder without the non-assigning Party’s prior written approval (i) to a successor-in-interest as a result of a merger or consolidation or in connection with the sale or transfer of all or substantially all of its business or assets to which this Agreement relates, or (ii) to the parent company or wholly owned subsidiary of the Party. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties, their successors and permitted assigns.
- c. Arbitration Agreement. The Parties agree that individual, final and binding arbitration is the exclusive means for resolving the claims outlined in this Agreement. Any arbitration under this agreement will take place on an individual basis; class arbitrations and class actions are not permitted. This Arbitration Agreement is a waiver of all rights the Parties may have to a civil court action on any dispute over the material terms of this Agreement. Only an arbitrator, not judge or jury, may decide the dispute. The arbitrator has the authority to award any type of relief that could otherwise be awarded by a judge or jury. The venue for the arbitration shall be San Francisco County, California, and the parties agree to equally share the cost of the arbitration.
- d. Non Exclusivity. Nothing in this Agreement limits the ability of either Party (i) to enter into other agreements with third parties with respect to arrangements similar



- in nature to or the same as those covered under this Agreement, or (ii) to provide goods or services that compete with the goods or services of the other Party.
- e. Miscellaneous. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the Party against which such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, and no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof. This Agreement and each Party's respective performance hereunder shall be governed by the laws of the state of California, without regard to its conflicts of laws rules. If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the Parties, and the remainder of the Agreement will remain in full force and effect. This Agreement constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior or contemporaneous communications, understandings and agreements, oral or written, relating to such subject matter. This Agreement may be modified only in a writing signed by both Parties. Section headings are for convenience only, and will not be used to interpret this Agreement. All terms which by their nature are intended to survive termination shall remain in full force and effect. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one agreement.

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IN WITNESS WHEREOF, the Parties hereto have signed this Software License Agreement as of the Effective Date.

GROWING ENERGY LABS, INC.

Signature:

Print Name:

~~Dr. Ryan Wartena~~
Dan Loflin *DWL*

Title:

CEO

CUSTOMER:

Signature:

Print Name:

VICE-CHANCELLOR FACILITIES

Title:

DOUG HORNER