Guidance on Standard Commercial Terms for Project Counterparty Agreements

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Guidance on Standard Commercial Terms for Project Counterparty Agreements

The three most important agreements, described below, are
1) Power Purchase Agreement;
2) Construction Contract; and
3) Financing Agreements.

1. Power Purchase Agreement (PPA): From a financing perspective, for both a commercial lender and an equity investor, the PPA provides the tangible and measurable source of revenue for the project. As such, the economics that the PPA delivers, and the credit quality of the Parties (for both of these factors, this is due to the long-term nature of any financing), form the bedrock of the investing or lending decision.

In order to buttress the economics and credit, many other important terms and conditions are required to make a PPA "financeable." Some of the key concepts are as follows:

- Parties: Seller (Project Company) and Buyer (name, type of business [local utility, corporate entity, municipal entity, etc.], credit standing (per long-term debt ratings, independent credit analysis of audited financials, third-party guaranty, etc.).
- Project: summary description (technology; principal equipment & components, and configuration; fuel input; efficiency; capacity; output; etc.), precise location(s), etc.
- Products(s) & Quantities: what is being produced and sold by Seller and bought by Buyer; eg capacity, energy, back-up or standby, ancillary services, volumes and/or availability of all products (min/max obligations, for both production/Seller [Project Company], and for purchaser/Buyer), time-of-day and seasonal periods; scheduling responsibility.
- Term of the PPA: delivery(ies) start date (tied to Commercial Operation Date – from the construction contract, end date, extension options or provisions, etc. Note: for financial modeling purposes, the useful life of the project will likely exceed the term of the PPA, which brings up post-PPA modeling assumptions (see Attachment D).
- Credit & Collateral Requirements: security required (cash collateral, Letter of Credit); amount(s), purpose, tenor (including schedule and conditions for stipulated increases a/o decreases); and by whom & of whom.
- Pricing methodology: units of measurement stated clearly (volumes, time, period, etc.); measurement methodology laid out in detail; points and times of measurement;
    - Bonus & penalty regime stated in detail.
    - Billing & payment documentation and cycle stated in detail.
    - Escalation factor(s) and methodology(ies) must be clearly described.
- Interconnection and delivery point(s) described both technically and geographically.
    - If any component of the interconnection is to be built, then the entirety of that enterprise must be documented in a separate agreement (parties, responsibilities, deliverables, milestones, costs, liabilities, etc., etc.). See also "Externalities," below.
- Milestones and criteria for meeting thereof: construction contract, completed engineering, permits obtained, financing commitment, construction start, externalities in place (eg fuel supply and/or interconnection), construction complete/performance tests, commercial operation date.
- Representations & Warranties: these terms affirm who the Parties are, how they are legally organized, and certifies that they have internally approved, and are authorized for entering into,

the subject contract terms & conditions. The purpose of this section is, *inter alia,* to protect against fraud by and between the Parties.

- Covenants (Affirmative and Negative): this section states what each of the Parties intends to do and not to do (effectively restating many of the key points of the contract), such as 'Seller will commence delivery of 5,000 MwHrs of energy annually to Buyer no later than July 1, 2017,' or 'Buyer will not terminate the contract prior to its expiry date.' The Covenants form the basis of the very important Events of Default section of the contract.
- Events of Default (small "d" and Capital "D" events) and Remedies: When a contract Party does not do what it is supposed to do, or does something it is not supposed to do – both according to the Covenants (Affirmative and Negative) of the contract, then this provides the basis for the other Party to call an Event of Default. Please note the following:
    - Events of Default can be informally categorized into small "d" and Capital "D" events:
        - "small "d"" defaults are generally failures of reporting or procedure, with little overall harm to the fundamental business deal and performance of key provisions of the contract.
        - "Capital "D"" defaults are those failures where the actions of one Party have caused, or can be expected to cause, significant harm to the other Party, and threaten the viability of the overall business arrangement embodied in the contract.
    - Every default has a Notice and a Remedy, thus enabling both the harmed Party to call out the harmful action and the other Party the ability to rectify or cure the problem. These often are categorized in ways that match the small "d" and Capital "D" circumstances, with required timing for notice and remedial actions stipulated accordingly.
    - Should the Notice and Remedy provisions prove inadequate, then the contract spells out what steps each Party is entitled to take thereafter, which may include termination of the contract, claiming of damages (through taking of security or collateral, drawing on Letters of Credit (L/C) or bonds, drawing down Liquidated Damages), replacement of the defaulting Party (with or without compensation, as so documented), etc.
- Definitions: This will be the section where many items that are used throughout the contract get their precise definition. Anything from the "Party" or "Parties," to "Commencement of Production" or "Capacity" or "Energy," to "Escalation Factor," etc. will be given its formal meaning in this section.
- Termination Rights: conditions/circumstances, notices, remedies, payments, etc.
- *Force Majeure*: a contract provision that relieves a Party (or both Parties) from performing their contractual obligations when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal, or impossible. Natural disasters, financial crisis, war, etc., are such commonly-cited circumstances.
- Liabilities, including change in law risk and change in regulations risk.
- Liquidated Damages: it is common that a Party to a contract can suffer measurable & tangible economic harm from the failure of the other Party to perform; in such circumstances, Liquidated Damages (LD's) are posted as the form of compensation for such damages. Should the Seller under a PPA be delayed 6 months from selling Energy to the Buyer under the PPA, for example, the Buyer will need to replace that Energy from somewhere else, potentially at a more expensive rate. LD's are designed and sized to cover just such a circumstance. <u>Note</u>: in this specific example,

the Seller will likely have covered this potential liability through a parallel arrangement of LD's from the construction contractor (see below).

- Externalities: The Parties may agree that there are items outside of the contract, and outside the control of one or both Parties, the realization or completion of which are integral to one or both Parties fulfilling their obligations under the contract. This may be completion of an interconnection facility by the local utility, construction of a facility by the local municipality or hospital, etc. In such a circumstance, the Parties define such externality and document the contractual provisions that would rule should such externality be delayed or not materialize, etc.
- Dispute Resolution: These contracts are complex, and future events may give rise to circumstances whereby the contract is not clear as to who has what rights or responsibilities, and the Parties often can end up disputing these matters, all without a trip of Covenants or an Event of Default. In those circumstances, the Parties will have agreed, up front, as to the methodology to be used to resolve such disputes, such as arbitration or mediation.
- Miscellaneous, such as Governing Law, Assignment Rights, Audit Rights, Confidentiality, etc.

Note, as well, that the economic and some commercial terms of the PPA must be accurately and comprehensively reflected in the project's financial model. For example, the pricing formula in the PPA for energy, capacity, time-of-day and seasonal periods, etc. must be incorporated properly into the model. A contractually stipulated escalation rate and methodology from the PPA must be accurately translated into the model. Additionally, if security such as a Letter of Credit is required of the Project Company, then that L/C amount should be included in the Sources & Uses Statement of the model, and the costs of obtaining that L/C should be included in the financing fees & expenses portion of the Construction Budget and, if the L/C is to be retained during all or a part of the operating period, such costs would be reflected in the Operating Expenses and Cash Flow sheets of the model.

An example of a "commercial" term that is not necessarily an economic term is the tenor of the PPA: if the PPA is for ten years, with all of its contracted economics (pricing, quantities, escalation, etc.), then the model needs to reflect the 'contracted' period of these factors (that is, ten years), and then the 'projected' period thereafter. And in this latter non-contracted period, rather than pointing to the PPA as the source of these data points, a solid analytical foundation for these projected values must be provided.

2. Construction Contract: Ideally, there will be a) one single construction contract, with a single contractor (the General Contractor, or GC) as the sole point of responsibility to the Project Company; and b) this will be a full-service and fixed price contract, often referred to as an EPC contract (for Engineer, Procure, and Construct). While such an arrangement is usually – on the surface – a more expensive manner in which to organize the engineering & construction effort, it also eliminates any ambiguity as to responsibility for realization of the project, and eliminates (or significantly reduces) the risk of cost overruns to the Project Company: these risks & responsibilities fall solely on the GC. Ultimately, what may have appeared to be more expensive at the start, turns out to be quite cost efficient. And an EPC is very attractive to lenders and equity investors, for exactly these same reasons.

- Parties: Owner (Project Company) and Contractor (name, type of business [corporate entity, subsidiary/affiliate, etc.], credit standing (per long-term debt ratings, independent credit analysis of audited financials, third-party guaranty, etc.).

- Project: summary description (technology; principal equipment & components, and configuration; fuel input; efficiency; capacity; output; etc.), precise location(s), etc.
- Contractor's Responsibilities: Scope of Services; Fixed Price; scope of Sub-Contractors' services; personnel and labor relations, including designated Project Manager (and procedures for changes thereto); safety, first aid, liability (Workmen's Compensation insurance, etc.) & emergencies; compliance with laws, permits & codes; books & records and reporting to Owner; no liens; etc.
- Owner's Responsibilities: access to site; Owner's designated representative (and procedures for changes thereto); provision of consumables, utilities, site security & interconnections; permits & licenses; compliance with law.
- Commencement of Work: authorization for GC to commence work; Project Schedule; Key Project Milestones; progress reports & tracking.
- Credit & Collateral Requirements: security required (cash collateral, Letter of Credit); amount(s), purpose, tenor (including schedule and conditions for stipulated increases a/o decreases); and by whom & of whom.
- Change Orders: Owner-directed changes; Contractor-directed changes; adjustment to price and or other terms – including, very importantly, review & approval procedures to accepting Change Orders.
- Payments: basis for payments/documentation/progress reports; payment procedure (incl. form of invoice; Owner's allowable review period and payments due period).
- Insurance: GC's required insurance; Owner's required insurance.
- Completion: notice of Mechanical Completion & testing therefore (testing procedures and compliance metrics); Substantial Completion & testing therefore (testing procedures and compliance metrics); Commercial Operation Date & testing therefore, Punch List (testing procedures and compliance metrics); Final Completion. *Force Majeure*.
- Warranty: warranty period, performance metrics, remedies, exclusions.
- Indemnity: GC's indemnity; Owner's indemnity.
- Representations & Warranties: these terms affirm who the Parties are, how they are legally organized, and certifies that they have internally approved, and are authorized for entering into, the subject contract terms & conditions. The purpose of this section is, *inter alia,* to protect against fraud by and between the Parties.
- Covenants (Affirmative and Negative): this section states what each of the Parties intends to do and not to do (effectively restating many of the key points of the contract), such as 'GC will achieve Commercial Operation Date no later than July 1, 2017,' or 'Owner will provide all fuel and chemicals required by GC for GC to commence performance tests to determine Substantial Completion.' The Covenants form the basis of the very important Events of Default section of the contract.
- Events of Default (small "d" and Capital "D" events) and Remedies: When a contract Party does not do what it is supposed to do, or does something it is not supposed to do – both according to the Covenants (Affirmative and Negative) of the contract, then this provides the basis for the other Party to call an Event of Default. Please note the following:
    - Events of Default can be informally categorized into small "d" and Capital "D" events:
        - "small "d"" defaults are generally failures of reporting or procedure, with little overall harm to the fundamental business deal and performance of key provisions of the contract.

    - "Capital "D"" defaults are those failures where the actions of one Party have caused, or can be expected to cause, significant harm to the other Party, and threaten the viability of the overall business arrangement embodied in the contract.
  - Every default has a Notice and a Remedy, thus enabling both the harmed Party to call out the harmful action and the other Party the ability to rectify or cure the problem. These often are categorized in ways that match the small "d" and Capital "D" circumstances, with required timing for notice and remedial actions stipulated accordingly.
  - Should the Notice and Remedy provisions prove inadequate, then the contract spells out what steps each Party is entitled to take thereafter, which may include termination of the contract, claiming of damages (through taking of security or collateral, drawing on Letters of Credit or bonds, drawing down Liquidated Damages), replacement of the defaulting Party (with or without compensation, as so documented), etc.
- Definitions: This will be the section where many items that are used throughout the contract get their precise definition. Anything from the "Party" or "Parties," to "Commencement of Work," "Construction Milestones," "Change Orders," "Adjusted Net Output," or "Commercial Operation Date," etc. will be given its formal meaning in this section.
- Termination Rights: conditions/circumstances, notices, remedies, payments, etc.
- *Force Majeure*: a contract provision that relieves a Party (or both Parties) from performing their contractual obligations when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal, or impossible. Natural disasters, financial crisis, war, etc., are such commonly-cited circumstances.
- Liabilities, including change in law risk and change in regulations risk.
- Liquidated Damages: it is common that a Party to a contract can suffer measurable & tangible economic harm from the failure of the other Party to perform; in such circumstances, Liquidated Damages (LD's) are posted as the form of compensation for such damages. Should the GC be delayed 6 months from achieving Commercial Operation Date, for example, then the Owner (in turn, as Seller under the PPA) will be in breach of commencing with the sale of energy, capacity, etc. under the PPA, and likely will have to pay delay damages to the Buyer under that contract. LD's are designed and sized to cover just such a circumstance. Note: in this specific example, the Owner will try to match LD's for delay damages under the construction contract with LDs required as Seller to the Buyer under the PPA for delay damages.
- Externalities: The Parties may agree that there are items outside of the contract, and outside the control of one or both Parties, the realization or completion of which are integral to one or both Parties fulfilling their obligations under the contract. This may be completion of an interconnection facility by the local utility, construction of a facility by the local municipality or hospital, etc. In such a circumstance, the Parties define such externality and document the contractual provisions that would rule should such externality be delayed or not materialize, etc.
- Dispute Resolution: These contracts are complex, and future events may give rise to circumstances whereby the contract is not clear as to who has what rights or responsibilities, and the Parties often can end up disputing these matters, all without a trip of Covenants or an Event of Default. In those circumstances, the Parties will have agreed, up front, as to the methodology to be used to resolve such disputes, such as arbitration or mediation.
- Miscellaneous, such as Governing Law, Assignment Rights, Audit Rights, Confidentiality, etc.

Note, as well, that the economic and some commercial terms of the construction contract must be accurately and comprehensively reflected in the project's financial model. For example, the total fixed price likely is broken down in the contract into periodic payments to the GC; therefore, the Construction sheet of the model should properly reflect this payment schedule. Other possible important economic terms are pre-construction deposits, retainage, bonus/penalties for performance (either in terms of time or equipment output/production/fuel consumption, etc.).

An example of a "commercial" term that is not necessarily an economic term is the "Commercial Operation Date," sometimes referred to as COD, and this is the date on which the GC has committed to having the project complete, operational and therefore revenue-producing. The financial model will reflect this, both in the target end date of the Construction sheet, as well as the target start date for the Revenues and other Operations-based sheets.

This brings up one additional, critical point: it is essential that key project agreements, such as the PPA and the construction contract, match up perfectly on significant terms. For example, the aforementioned Commercial Operation Date should have the same definition and date in both agreements, such that the GC is expected to have the project complete and in position to start generating revenues at precisely the same time that, under the PPA, the Project Company (as Seller) has committed to the Buyer to begin delivering capacity, energy, etc. Similarly, the products, outputs & efficiency (overall performance) of the equipment as documented in the construction contract should match precisely with the deliverables defined in the PPA. And, again, all of these factors are then to be accurately reflected in the financial model.

3. Financing Agreements: The capital to develop & build the project will generally come from Lenders providing debt, and investors (which may include the Contractor and/or other initial partners), as well as third-party, or independent entities providing equity.

3.a. Debt: At its simplest, debt will be provided by senior lenders such as NY Green Bank and other commercial lenders. Debt will be provided on a "*non-recourse*" basis, meaning that Lenders will look to the overall credit, financial viability and business model of the Project Company, rather than the credit of the NY Prize Contractor or other sponsors. Lenders' ability to take this perspective relies on, *inter alia,* the comprehensiveness and credibility of the aforementioned PPA and construction contract. Because Lenders are providing the loan on a non-recourse basis, their documentation around the Project Company will be more comprehensive, encompassing and complex than project sponsors may have ever seen in traditional corporate, municipal, or personal loan circumstances.

Having emphasized the breadth of the non-recourse documentation, and despite the complexity of a microgrid project, Lenders still will seek to distill all of this into an elemental "5 C's of Credit," which are:

- Character: confirm that the NY Prize Contractor and its team have an unblemished record of integrity and fair business dealing.
- Capacity: determine that the Contractor, plus any other execution team members, has the experience and track record to successfully realize the project.

- Capital: analyze all possible costs to complete the project, including robust contingency, and confirm that – through the presented (ie committed) pieces of debt and equity, the project has been appropriately & fully capitalized.
- Collateral: through the documentation and as confirmed by attorneys and other specialists, achieve comfort that the Lender has adequate collateral.
- Conditions: confirm that, in the totality of the documentation, the commercial terms are fair and work for all parties involved.

A well-documented non-recourse loan may actually be embodied in a series of agreements, such as the credit agreement (fundamental loan terms & conditions), depositary agreement (controlling the flow of funds, via a Trustee), agency agreement (in larger loans: delineating the rights & responsibility of the one Lender who acts as agent for a syndicate of Lenders), security agreement (perfecting the Lenders' first lien rights on the assets), mortgage (perfecting Lenders' security in the property), and so on. Across these documents, some of the key concepts are as follows:

- Parties: Borrower (Project Company) and Lender(s).
- Project: summary description (technology; principal equipment & components, and configuration; fuel input; efficiency; capacity; output; etc.), precise location(s), etc.
- Credit Facilities: a description of the credit facilities that the Lenders are making available to the Borrower, including amounts and which may include the issuance of Letters of Credit in addition to cash funding, when the individual facilities are available, how draws are made, interest (base rate plus credit spread) and fees, repayment terms & schedule and prepayment rights, etc.
- Representations & Warranties: these terms affirm who the Parties are, how they are legally organized, and certifies that they have internally approved, and are authorized for entering into, the various credit documents, and that at the time of entering into these credit agreements, there were no defaults, misrepresentations, judgements, lawsuits or liens outstanding on or by the Borrower. In particular, the Lenders seek a representation that all of the information provided about the project (its technology, intellectual property, costs, construction plan, performance & output, revenue base and operating costs, clear title to property and assets, permits & licenses, compliance with environmental regulations, etc.) are true and correct, to the best of the Borrower's knowledge. The purpose of this section is, *inter alia,* to protect against fraud by the Borrower.
- Conditions Precedent (CP's): between the time that Lenders indicate their interest in providing the credit, and the time of actual financial close, they will require that the Project Company/Contractor complete and or solidify many of the integral components of the project. The CP's will be a comprehensive list, including: confirmation that all fundamental project contracts (such as the PPA and the construction contract) are finalized and executed, to the complete satisfaction of the Lenders; receipt of all permits and licenses & confirmation of environmental compliance; technical approval by the Lenders' own independent specialists such as engineers and attorneys; confirmation of the commitment for any other financial components that complete the full project financing (including achieving the CP's of any of those commitments), etc. These will be detailed in the CP section and when, and only when, each and every condition has been satisfied, will there be the financial close to the loan and first funds will flow.

- Covenants (Affirmative and Negative): this section states what each of the Parties intends to do and not to do (effectively restating many of the key points of the credit agreement), such as – in the affirmative: 'the Borrower will cause the GC to achieve Commercial Operation Date no later than July 1, 2017,' and 'the Borrower will repay all loans according to the Amortization Schedule in Section X;' or in the negative: 'the Borrower will not allow any changes in major project contracts (such as the PPA or the construction contract) without the Lender's written consent & approval,' and 'the Borrower will not declare bankruptcy under any circumstances' (because Lenders lose significant control of their borrowers under bankruptcy protection). The Covenants form the basis of the very important Events of Default section of the contract.
- Events of Default (small "d" and Capital "D" events) and Remedies: In credit documents, these run primarily as to when the Borrower does not do what it is supposed to do, or does something it is not supposed to do – according to the Covenants (Affirmative and Negative) section, then this provides the basis for the Lenders to call an Event of Default. Please note the following:
    - Events of Default can be informally categorized into small "d" and Capital "D" events:
        - "small "d"" defaults are generally failures of reporting or procedure, with little overall harm to the fundamental business deal and performance of key provisions of the contract..
        - "Capital "D"" defaults are those failures where the actions of the Borrower have or may significantly affect repayment of the loan, and threaten the viability of the overall business arrangement embodied in the contract. <u>Please note</u>, as well, that it is customary for Lenders to include events of default or any other such problematic circumstances (such as declaration of *Force Majeure*) under other project agreements (such as the PPA, construction contract, or equity investment commitment) as a Capital "D" event of default under the credit agreement.
    - Every default has a Notice and a Remedy, thus enabling both the Lender to call out the harmful action and the Borrower the ability to rectify or cure the problem. These often are categorized in ways that match the small "d" and Capital "D" circumstances, with required timing for notice and remedial actions stipulated accordingly.
    - Should the Notice and Remedy provisions prove inadequate, then the credit agreement spells out what steps the Lenders are entitled to take thereafter, which likely will include termination of the funding provisions of the loan (if not completely drawn at that point), and acceleration of the outstanding amount of the loan (meaning full & complete repayment of whatever loans are outstanding at that moment is immediately due).
- Definitions: This will be the section where many items that are used throughout the contract get their precise definition. Anything from the "Party" or "Parties," to "Adjusted Base Rate," "Base Case Financial Case," "Debt Service Coverage Ratio," "Utility Easement Agreement," or "Person," etc. will be given its formal meaning in this section.
- *Force Majeure*: a contract provision that relieves a Party (or both Parties) from performing their contractual obligations when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal, or impossible. Natural disasters, financial crisis, war, etc., are such commonly-cited circumstances.
- Externalities: The Lenders may agree that there are items outside of the project, and outside the direct control of the Borrower, the realization or completion of which are integral to fundamental project. This may be completion of an interconnection station by the local utility, construction of

a facility by the local municipality or hospital, etc. In such a circumstance, the Parties define such externality and document the contractual provisions that would rule should such externality be delayed or not materialize, etc.

- Miscellaneous, such as Governing Law, Assignment Rights, Audit Rights, Confidentiality, etc.

As noted previously, the useful life of the project will likely exceed the term of the PPA (with proper care and maintenance); however, the Lenders will generally structure their loan such that it can be repaid in full within the life of that PPA or, more likely, a year or two less than its term (and under certain circumstances, refinancing of the loan is a possibility in the future). But the value of the asset, in the post-PPA period, provides significant upside economic value to the equity investors.

3.b. Equity: Lenders will assess the economics of the project (fundamentally: costs to construct including financing costs, expected revenues, and expected expenses), distilling this down to a threshold amount of debt that can be comfortably repaid through free cash flow (all within, as mentioned previously, the term of the PPA or just short of that term). The difference between a) the fully loaded costs to construct the project plus financing costs; and b) that amount of debt as determined by the Lenders; must be provided by c) equity. As mentioned above, a condition precedent of the Lenders will be that the full equity component is firmly committed and documented for the Lenders to achieve financial close and first funding; usually, the Lenders will require that funding of the construction costs is on a pro rata basis between the Lenders and equity investors.

For their part, equity investors have a different perspective than Lenders: equity is legally subordinate to the Lenders, meaning that all free cash flow from the project goes first to the Lenders, and then only do remaining funds flow to equity. In this way, equity takes greater risk, but also enjoys potential upside financial benefits if the project performs in excess of expectations (and the Lenders do not share in any of this upside). Equity takes this into account in determining whether to invest, assessing both the downside (the project performs just enough to service the debt, or worse), and the upside (greater-than-expected financial results, plus the economic value of ownership in the Project Company well past the maturity and full repayment of the loan). Because of the subordinated position and greater exposure to downside risk, the cost of equity is always greater than the cost of debt.

Equity agreements are more project- and circumstance-specific than credit agreements, especially for single-purpose businesses such as the Contractor's discrete microgrid project, and are usually not as comprehensive as the full body of credit-related documents. Some fundamental issues of the equity deal are:

- Organizational Matters: clarifying the special purpose vehicle (SPV) status and the legal form of the entity (limited liability company, S-Corp., corporation, etc.); defining the specific nature of the SPV's business (i.e. in this case, the specific Microgrid project, and no other businesses); principal place of business and registered domicile.
- Membership and Ownership: names of partners (eg individuals and ownership entities); financial and economic contributions; allocation of Ownership Units in the SPV to each partner; classes of Ownership Units (A-Shares, B-Shares, etc.), if applicable; additional capital contributions

(circumstances, determination of, dilution of existing Ownership Units and/or issuance of additional Ownership Units).

- Economics & Distributions: defining how distributions are allocated amongst the partners, Ownership Units, and – as applicable – between the A-Shares, B-Shares, etc. Some common forms of allocations are pro rata, priority interests, flip points, carried interest, waterfall, catch-up, back-end.
- Management; Roles & Responsibilities: there usually is a General Partner (GP), who has experience in the fundamental business of the project, and who manages the day-to-day affairs of the Project Company (in its capacity as Borrower under the credit agreement and a Party to the PPA, construction contract, operations & maintenance, etc.); and one or more Limited Partners (LP's), who have determined trust in the GP & its capabilities/track record, and who have primarily a financial interest in the enterprise. Amongst the Partners (GP and LP's), there may also be formed function-specific committees, to provide guidance to and/or oversight of the GP, such as finance, operations, fees & expenses of the SPV (as appropriate), tax & audit, etc.
- Governance & Voting: Not all partners may have a Board seat and, similarly, not all partners may have a say in the voting of specific governance matters of the SPV. All of this is a function of negotiation amongst the partners in determining investment amounts, formulas & methodologies of determining distributions and economic terms, governance rules and voting formulas of the SPV, (including recusal circumstances, as and when necessary), etc. In addition, vote tallies may be segmented, depending upon different business matters, such that some issues require unanimity, some super-majority, and some majority.
- Taxes & Accounting; P&L Allocations: Responsibility for maintenance of books & records; bank accounts; financial & accounting reporting; determination of independent outside auditor, etc. SPVs of capital-intensive projects such as microgrids frequently have a valid discrepancy in the financial results between GAAP accounting (for IRS reporting purposes) and cash accounting, due to the effects of capital investment, depreciation, interest expense, timing matters, etc. (all of which are absolutely standard in the accounting for these projects)..
- Transfers & Exits: SPVs, because they are organized for a specific purpose and generally have a limited number of partners, generally provide for limited ability to transfer and/or dispose of the Ownership Units. Such restrictions and transfer & exit provisions are specified in detail in these sections of the equity agreement.
- Miscellaneous, such as Definitions, Governing Law, Dispute Resolution, Representations & Warrantees, Covenants (affirmative & negative), Events of Default, Conflicts of Interest, Confidentiality, etc.

4. Additional Agreements: Depending upon the composition & complexity of the Contractor's microgrid project, additional contracts may include: fuel supply; third party operations & maintenance; risk management arrangements such as interest rate hedge instruments or supplemental energy sales contracts; engineering design services (which may be supplemental to, or not covered under, an EPC construction contract); equipment supply (if not covered directly under an EPC construction contract, or for components outside of the construction contract); labor agreement; interconnection facility agreement (which may include costs for which the project is responsible, so this would be considered part of the Externalities, as discussed above, and must be incorporated into the Sources & Uses Statement and elsewhere in the financial model); permits, license & any other government authorizations or agreements;

real estate easements & rights of way; independent tax, accounting & audit services; opinions of legal counsel (usually required by the Lenders from all major project participants with which the Borrower has contracts or agreements); consents (usually required by the Lenders from all major project participants with which the Borrower has contracts or agreements); etc.

To the extent that any or all of these agreements involve costs (upfront/capital or operational), revenues, or other commercial or economic terms, they must, as equally as the PPA, construction & financing agreements discussed above, be accurately and thoroughly incorporated into the financial model.