

[INSERT PROJECT NAME]
ENERGY CONVERSION AGREEMENT

BETWEEN

**THE GUAM POWER AUTHORITY
(GPA)**

AND

[PROJECT COMPANY]

for a

Gas Dual Fired Power Electric Facility

Located at [Insert Location], Guam

2018

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ENERGY CONVERSION AGREEMENT

THIS ENERGY CONVERSION AGREEMENT (the "**Agreement**") is entered into as of this _____ day of _____, 2018 **BETWEEN** the Guam Power Authority, a public corporation and an enterprise fund of the Government of Guam established by the Guam Power Authority Act of 1968 (herein referred to as "**GPA**"), with principal offices located at Gloria B. Nelson Public Service Building 688 Route 15 Fadian, Mangilao, Guam, **AND** [Project Company], a [insert legal name and description] (herein referred to as the "**Project Company**"), with principal offices at [insert address].

RECITALS

WHEREAS, pursuant to the Invitation For Bids issued by GPA on [insert applicable date] (as amended or supplemented), the Project Company has been chosen to develop, design, permit, finance, construct, test, commission, complete, own, insure, operate and maintain an electric power plant (the "Facility", as hereinafter defined) on a build, own and transfer basis at [insert location], Guam, to provide electric power capacity and net energy output to GPA;

WHEREAS, under [the Guam Power Authority Act of 1968] GPA is authorized to enter into contracts whereby it will purchase electric capacity and net energy output from third parties in Guam;

[INSERT WHEREAS CLAUSE REGARDING RELEVANT AND UPDATED PUC APPROVAL ORDER/S]

WHEREAS, the Project Company desires to sell electric capacity and net energy output of the Facility to GPA in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, GPA is agreeable to purchasing such electric capacity and net energy output from the Project Company in accordance with the terms and conditions set forth in this Agreement.

NOW THIS AGREEMENT WITNESSETH as follows:

[Note: Sections of this ECA and other IFMSB documents which reference Fuel or Fuel related concepts and defined terms such as Heat Rate, Guaranteed Heat Rate, Fuel Charge, etc... are only applicable to Proposals and Facilities that include a Fossil Fuel Fired Component.

ARTICLE 1 DEFINITIONS

Each of the following capitalized terms shall have the meaning set forth below unless a different meaning is expressly attributed to it in the Agreement. All units of measurement used in this Agreement shall conform to the English System of Units unless explicitly stated otherwise.

"Abandonment" means a voluntarily cessation by Project Company of the development, construction or operation of the Facility and either (i) the Project Company expressly declares in writing that development, construction or operation of the Facility will not be resumed; or (ii) such cessation continues for 60 consecutive Days, provided that an Abandonment shall not occur if the Project Company is using commercially reasonable and diligent efforts to commence or reinstate development, construction or operation.

"Actual Heat Rate" means the Heat Rate expressed in BTU per kWh as determined by Commercial Operation Tests.

"**AGC**" means automatic generation control.

"**Agent**" has the meaning set forth in Article 5.2.

"**Agreement**" or "**ECA**" means this Energy Conversion Agreement, including its Schedules, as amended, supplemented or modified in accordance with the terms and conditions herein.

"**Allowable Total Outages Energy**" has the meaning set forth in Article 9.3.

"**Allowable Forced Outages Energy**" has the meaning set forth in Article 9.3.

"**Annual Average Dependable Capacity**" means for the relevant Contract Year, an amount equal to (a) the sum of the multiplication of each Dependable Capacity (including Initial Dependable Capacity) in effect during such Contract Year by the number of hours that each such Dependable Capacity was in effect during such Contract Year, divided by (b) the number of hours in such Contract Year.

"**Average Dependable Capacity**" means, for the period from the Phase 1 Commercial Operation Date to the end of the first Contract Year, an amount equal to (a) the sum of the multiplication of each Dependable Capacity (including the Initial Dependable Capacity) in effect during the period by the number of hours that each such Dependable Capacity was in effect during the period, divided by (b) the number of hours in the period.

"**Bank**" means the Federal Reserve Bank of the United States of America.

"**Bank Rate**" means the prime interest rate of the Bank from time to time.

"**Bid Date**" means [].

"**Bid Guarantee**" means the security established in accordance with the IFMSB to secure inter alia, Project Company's obligations as set forth in this Agreement, during the period between the execution of this Agreement and Financial Close.

"**Black Start**" means the process of restoring an electric power station to operation without relying on the external transmission network.

"**British Thermal Unit**" or "**Btu**" means the amount of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

"**Business Day**" means any Day (including partial Days) of the Year on which banks are required to be open for business in Guam.

"**Capacity Charge**" has the meaning set forth in Schedule 5.

"**Capacity Damages**" has the meaning set forth in Article 9.3.

"**Cause**" means, in relation to the issuance, renewal, revocation, amendment or modification of any Government Authorization, any default, neglect or failure by Project Company to abide by any Laws of Guam or any of the terms and conditions of any Government Authorization which entitles the relevant Government Authority to revoke, or refuse to issue or renew, the Government Authorization or make an amendment to its terms and conditions.

"Change in Law" means any of the following events occurring as result of any action by any Government Authority:

- (a) the adoption, imposition, promulgation, coming into effect, modification or repeal of any Law of Guam that affects the Project or Project Company; or
- (b) any change in the manner in which a Law of Guam that affects the Project or Project Company is applied or interpreted; or
- (c) the imposition by a Government Authority (other than for Cause) of any material condition or delay in connection with the issuance, renewal, or modification of any Government Authorization,

that establishes or results in requirements that affect or relate to the Project that are materially more or less restrictive or materially more or less costly for Project Company.

"Commercial Operation Date" or **"COD"** means, for each of Phase 1 and Phase 2, the earlier of (i) the Day following the Day upon which the Phase is Commissioned; or (ii) the Day following the Day upon which the Phase is deemed Commissioned in accordance with Article 8.

"Commercial Operation Period" means, with respect to the Facility, the period of time commencing on the Phase 1 COD and ending on (but including) the last day of the Term.

"Commercial Operation Tests" mean the tests specified in Schedule 4 to demonstrate that the standard requirements and the guaranteed values (set out in Schedule 4) are met to achieve the COD with respect to each Phase.

"Commissioned" means notification by Project Company, accompanied by a report of the GPA Engineer certifying that the tests for Phase 1 or Phase 2, as the case may be, have been satisfactorily completed in accordance with Schedule 4, and that the Facility meets the relevant characteristics set out in Schedule 1 and Schedule 2, provided that upon receipt of such notice and report the date on which each Phase is Commissioned shall be the date upon which the tests for such Phase (as referred to above) have been satisfactorily completed.

"Commissioning" means the process by which a Phase is Commissioned.

"Connection Agreement" has the meaning set forth in Article 5.5(i).

"Construction Contract" means the agreement/s between Project Company and the Construction Contractor/s for the design, engineering, procurement, construction and Commissioning of the Facility, as amended from time to time.

"Construction Contractor" means the construction contractor/s that are party to the Construction Contract.

"Construction Period" means the period of time commencing on the Construction Start Date and ending on the Phase 2 Commercial Operation Date.

"Construction Start Date" means the day on which Project Company issues the first Notice to Proceed to a Construction Contractor.

"Contracted Characteristics" means the characteristics of the Facility described in Schedule 2.

"Contracted Facility Capacity" means the net electric power generating capacity of the Facility guaranteed to be provided to the Delivery Point on a continuous basis, adjusted to Site Reference Conditions as set forth in Schedule 2 and to the Fuel being consumed by the Facility at any given time, if applicable.

"Contracted Phase 1 Capacity" means the net electric power generating capacity of Phase 1 guaranteed to be provided to the Delivery Point on a continuous basis, adjusted to Site Reference Conditions as set forth in Schedule 2 and to the Fuel being consumed by the Facility at any given time, if applicable.

"Contractors" means the Construction Contractor and the O&M Contractor.

"Contract Year" means a period of twelve (12) consecutive months commencing on each consecutive anniversary of the Phase 1 Commercial Operation Date and ending as of the end of the Day preceding the next anniversary of the Phase 1 Commercial Operation Date, except for the first Contract Year which shall start on the Phase 1 Commercial Operation Date.

"Day" means a twenty-four (24) hour period beginning and ending at 12:00 midnight Guam time.

"Declared Capacity" means the estimated net capacity of the Facility (adjusted to Site Reference Conditions) announced by Project Company pursuant to Article 10.3.

"Delivery Point" means the connection point of the Electrical Interconnection Facilities to the 115 kV bus bar at the Facility's switchyard where GPA receives the Net Energy Output from the Project Company, as to be specified in Schedule 2.

"Dependable Capacity" means, at any given time, the net capacity of the Facility (excluding any capacity associated with a Renewable Component) operating on ULSD or Natural Gas if and when applicable, measured in kW (adjusted to Site Reference Conditions), at the Delivery Point of the Facility as determined by the most recent Dependable Capacity Test, provided that for purposes of calculating the Capacity Charge, the Dependable Capacity shall not exceed the Contracted Facility Capacity.

"Dependable Capacity Test" has the meaning set forth in Schedule 4 and the frequency described in Article 8.2.

"Dispatch Instruction" is an instruction issued directly by the PSCC to Project Company in accordance with (i) the dispatch principles and guidelines established by GPA in accordance with the applicable system grid code for the Grid System; (ii) the Operating Procedures; (iii) the Technical Limits; (iv) Prudent Utility Practices; and this Agreement.

"Dispute" means any dispute or disagreement of any kind whatsoever between GPA and Project Company in connection with or arising out of this Agreement.

"Dollars" or **"USD"** or **"US\$"** all mean the lawful currency of the United States of America.

"Early Transfer Price" means the applicable price set forth in Schedule 10 for the purchase of the Facility by GPA from Project Company pursuant to Article 5.5 (e), as the case may be.

"Electrical Interconnection Facilities" means all of the electrical interconnection facilities and equipment described in Schedule 1 to be constructed by the Project Company and transferred to GPA at the Phase 1 Commercial Operation Date.

"Emergency" means a condition or situation that in the reasonable opinion of GPA poses an imminent threat of (a) materially adversely affecting the ability of GPA to maintain safe, adequate and continuous electrical service to its customers, having due regard to the then current standard of electrical energy provided to its customers; or (b) endangering the safety of people, plant, or equipment.

"Energy Charge" has the meaning set forth in Schedule 5.

"Environmental Attributes" means (a) credits, benefits, reductions, offsets and other beneficial allowances, howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of Facility generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of energy generated by the Project during the Term and in which Project Company has property rights or will have property rights upon such attributes coming into existence, and include any of the same arising out of legislation or regulation (i) concerned with (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (C) implementing the United Nations Framework Convention on Climate Change (the **"UNFCCC"**) or protocols connected to the UNFCCC or crediting "early action" with a view thereto, and (b) all Environmental Attribute Reporting Rights.

"Environmental Attribute Reporting Rights" means the rights to report the ownership of any Environmental Attribute, including those rights accruing under any emissions trading program.

"Equity Documents" means any agreements relating to the issuance, subscription, placement or underwriting of Shares or other securities convertible into Shares issued by Project Company and any instruments constituting or evidencing Shares or other securities convertible into Shares issued by Project Company, and any documents or agreements evidencing or relating to indebtedness for money borrowed by Project Company from the Investors or their affiliates which, by its terms, is subordinated to any indebtedness for borrowed money incurred by Project Company under any Financing Document.

"Excess Energy" means, for a hybrid Facility, any energy that can be made available by the Facility, for any given hour, in excess of the energy that can be generated by the Facility operating at 100% of Dependable Capacity due to the spare capacity of the Fossil Fuel Fired Component that is available during the periods when the Renewable Component is capable of generating renewable energy.

"Excess Energy Output" means any Excess Energy which is dispatched by the PSCC under a Dispatch Instruction and is subsequently delivered by the Facility to the Delivery Point.

"Excessive Forced Outages Energy" has the meaning set forth in Article 9.3.

"Excessive Total Outages Energy" has the meaning set forth in Article 9.3.

"Excusable Event" means events or circumstances constituting a Change in Law or Force Majeure event occurring after the date of this Agreement and prior to Financial Close that prevents Project Company from performing its obligations under this Agreement.

"Expected Phase 1 Commercial Operation Date" means [insert applicable date].

"Facility" means an electric generating facility with an expected continuously available fully dispatchable capacity of []MW net (when operating on ULSD if the Facility operates on fossil fuel) to be constructed by Project Company at a leased Site in Guam, whether completed or at

any stage of development and construction, including, without limitation or regard to the level of development, the leased land, buildings, engineering and design documents, all power producing equipment and auxiliary equipment including Black Start capability, Fuel handling and storage infrastructures, water intakes and discharges, water treatment and pumping facilities, solid waste disposal facilities, main and plant transformers, plant switchgear, and all other installations as described in Schedule 1.

“Facility Transfer” has the meaning set forth in Article 18.1.

“FERC” means the U.S. Federal Energy Regulatory Commission.

“Final Major Overhaul” has the meaning set forth in Article 18.2.

“Financial Close” means the date on which all conditions of the Lenders under the Financing Documents have been met or waived (in accordance with the terms thereof), and initial financing disbursements can take place (as certified by the Agent in writing).

“Financing Documents” means the loan agreements, notes, bonds, note or bond purchase agreements, participation agreements, indentures, security agreements, hedging agreements, guarantees, shareholder support agreements, the Lenders' Direct Agreements and other documents relating to the construction and permanent financing (including refinancing) of the Facility or any part thereof provided by any Lender, but excluding any Equity Documents.

“First Fill” has the meaning set forth in Article 4.3.2.

“Fixed Operation and Maintenance Charge” has the meaning set forth in Schedule 5.

“Force Majeure” has the meaning set forth in Article 17.

“Force Majeure Transfer Price” means the applicable price set forth in Schedule 10 for the purchase of the Facility by GPA from Project Company pursuant to Article 5.5(g).

“Forced Outage” means a failure to make available the Dependable Capacity:

- (a) that is not the result of a request by GPA in accordance with this Agreement;
- (b) that is not the result of a Scheduled Outage or a Maintenance Outage;
- (c) that is not the result of an event or occurrence of a Force Majeure;
- (d) that is not the result of a condition caused by GPA or by the Grid System, provided that such condition would not have occurred without the action or inaction of GPA or the condition of the Grid System; or
- (f) that does not occur during any period during which the Facility is deemed to provide the Dependable Capacity under Article 8.

“Forced Outages Energy” has the meaning set forth in Article 9.3.

“Fossil Fuel Fired Component” means, for a hybrid plant, the part of the Facility which utilizes Reciprocating Engine Generators or Combustion Turbine Generators.

"Fossil Fuel Fired Net Energy Output" means the portion of the Net Energy Output generated by the Fossil Fuel Fired Component and equal, for any time interval, to the Net Energy Output minus Renewable Net Energy Output.

"Fuel" means fuel used by the Facility, which will be ULSD (as specified in Schedule 7) or Natural Gas (as specified in Schedule 9).

"Fuel Delivery Point" has the meaning set forth in Schedule 1.

"Fuel Price (FP)" has the meaning set forth in Schedule 5.

"Fuel Supply Requirement" has the meaning set forth in Article 4.3.1(a).

"Functional Specifications" or **"Specification"** means the characteristics (adjusted to Site Reference Conditions) for the design, construction and operation of the Facility, as set forth in Schedule 1.

"Government" means the Government of Guam and the Government of the United States, as applicable.

"Government Authority" means the Government and/or any national or local governmental authority of Guam with jurisdiction over Project Company, the Project or any part thereof, and/or any department, regulatory, supervisory or competent authority, or political subdivision or instrumentality, agency or judicial body of the Government, or any national or local governmental authority of the Government and/or any person under the direct or indirect control of any of the foregoing.

"Government Authorizations" means all formal written permits, licenses, authorizations, consents, decrees, waivers, privileges, approvals and filings required to be obtained from or provided by any Government Authority for the execution, delivery and performance of this Agreement, any other Project Agreement or any Financing Document, including without limitation the design, development, construction, financing, ownership, maintenance and operation of the Facility (and all other activities incidental thereto), as contemplated by this Agreement, the other Project Agreements and the Financing Documents.

"GPA" has the meaning set forth in the Preamble hereto.

"GPA Default Transfer Price" means the applicable price set forth in Schedule 10 for the purchase of the Facility by GPA from Project Company pursuant to Article 5.5 (d), as the case may be.

"GPA Engineer" means the engineering company selected by GPA, the costs of whose appointment and retention shall be paid by GPA.

"GPA Event of Default" has the meaning set forth in Article 5.3.

"Grid System" means the transmission and distribution facilities through which the Net Energy Output may be transmitted and distributed to users.

"Guaranteed Heat Rate" or **"GHR"** means the Heat Rate (at the Site Reference Conditions) guaranteed by the Project Company for the Fossil Fuel Fired Component, for Phase 1 and Phase 2, as set forth in the tables included in Schedule 5.

"**Guam**" or "**Territory of Guam**" means that certain unincorporated and organized territory of the United States in Micronesia.

"**Heat Rate**" expressed in Btu per kWh, means the fuel energy consumption expressed in Btu (higher heating value) required to generate one kWh by the Fossil Fuel Fired Component at the high voltage bushings of the main power transformers.

"**ICC Rules**" means the Rules of Arbitration of the International Chamber of Commerce.

"**IFMSB**" means the invitation for bids issued by GPA on [...] and including all updates and amendments thereto between the date of its submission and the date of this Agreement.

"**Independent Engineer**" means a qualified, international, and independent engineering firm selected by Project Company and approved by GPA for purposes of certifying any claim by Project Company that the Facility should be deemed Commissioned in accordance with Article 8.5.

"**Independent Expert**" has the meaning set forth in Article 18.4.

"**Initial Dependable Capacity**" means, at the Commercial Operation Date for Phase 1 or Phase 2, as the case may be, the capacity set upon successful completion of the Dependable Capacity Test for such Phase and used to establish its respective Commercial Operation Date, which is the maximum capacity adjusted for Site Reference Conditions that the Facility is demonstrated to be capable of delivering continuously at the Delivery Point at that time, in accordance with (and subject to) Article 8.1(d)(iii) and is the capacity to apply until the next Dependable Capacity Test occurs after the Phase 2 Commercial Operation Date.

"**Initial Shareholders**" means [].

"**Investor**" means a shareholder of Project Company

"**Invoice Due Date**" has the meaning set forth in Article 14.4.

"**Joint Coordinating Committee**" is the committee established by Project Company and GPA pursuant to Article 11.

"**kW**" means kilowatts.

"**kWh**" means kilowatt-hours.

"**Law**" or "**Laws**" means the laws of Guam and the United States of America.

"**Land Lease Agreement**" or "**LLA**" means the agreement entered into by and between Project Company and GPA whereby Project Company will lease the site on which the Facility shall be built.

"**Lenders**" means the lenders, guarantors, credit providers, multilateral agencies, export credit agencies or other financial institutions or insurers providing (or supporting) the financing or refinancing arrangements for the Project pursuant to the Financing Documents, but not including any Investor or affiliate of an Investor with respect to indebtedness for money borrowed by Project Company from any such Investor or affiliate.

"Lenders' Direct Agreement" means the agreement entered into by the Project Company, GPA, and the Lenders and/or their security agent on [].

"Liquidated Damages Due Date" has the meaning set forth in Article 9.7.

"Liquidated Damages Notice" has the meaning set forth in Article 9.7.

"Loss" means any loss, cost, expense damage, liability, payment or obligation (including reasonable legal fees and expenses but excluding any indirect or consequential loss, cost, expense, damage, liability, payment or obligation or any loss of revenue or loss of profit).

"Maintenance Outage" means an interruption or reduction of the generating capability of the Facility that:

- (a) is not a Scheduled Outage;
- (b) has been scheduled in accordance with Article 10.4(f); and
- (c) is for the purpose of performing work on specific components of the Facility which work should not, in the reasonable judgment of Project Company, be postponed until the next Scheduled Outage.

"Major Overhaul" means the repair and reconditioning of any Unit of the Facility that is conducted in accordance with Article 10.4(g) and Schedule 2.

"Maximum Natural Gas Switch Quantity" has the meaning set forth in Article 8.2(f).

"Metering System" means the measurement system capable of interpreting readings of all pertinent parameters required by the invoicing process.

"Million Btu" or **"MMBtu"** means 10^6 Btu.

"Month" means a month according to the Gregorian Calendar, and **"Monthly"** shall be construed accordingly.

"MW" means megawatts.

"MWh" means megawatt hours.

"Natural Gas" means natural gas meeting the Fuel specifications contained in Schedule 9.

"Net Energy Output" means the energy output delivered by the Facility and accepted by GPA during a given period of time measured in kWh by the Metering System at the Delivery Point (including Excess Energy Output).

"NERC" means North American Electric Reliability Corporation.

"Notice" has the meaning set forth in Article 22.

"Notice of Intent to Terminate" has the meaning set forth in Article 5.5(a).

"Notice to Proceed" means the initial notice to the Construction Contractor to commence engineering, procurement or construction work pursuant to the Construction Contract.

"O&M Contract" means any agreement entered into between Project Company and a third party contractor for the operation and maintenance of the Facility.

"O&M Contractor" means the party to any O&M Contract which is responsible for the operation and maintenance of the Facility.

"Operating Procedures" means the operating procedures developed by the Parties pursuant to Articles 7.4 and 10.2 and in compliance with the applicable system grid code, as such procedures may be modified from time to time in accordance with Article 7.4 and the applicable system grid code.

"Outage Hours" means for each month during the Commercial Operation Period, the total number of full load equivalent hours during such month in which Dependable Capacity is reduced due to Forced Outages, Maintenance Outages and Scheduled Outages which shall be calculated as the summation of the duration of each such outage in the month (in hours) multiplied by the reduction in Dependable Capacity during such outage (in MW) divided by the Dependable Capacity (in MW).

"Party or Parties" means GPA and Project Company, either individually or collectively.

"Performance Bond" means the security established in accordance with Article 9.6(d) to secure the Project Company's ability to pay liquidated damages in accordance with Article 9.

"Period of Testing" means, with respect to each Phase, the period from initial synchronization of a Unit or Facility to the Commercial Operation Date for such Phase, during which period testing occurs and net power is produced.

"Phase" means either Phase 1 or Phase 2, or both, as the context indicates.

"Phase 1" means all work as required to put the Simple Cycle Unit in case of a combined cycle Facility or full firm base load capacity in case of other technologies into commercial operation.

"Phase 1 Commercial Operation Date" means the Commercial Operation Date for Phase 1.

"Phase 2" means all work as required to put the entire facility into commercial operation.

"Phase 2 Commercial Operation Date" means the Commercial Operation Date for Phase 2.

"Power System Control Center" or **"PSCC"** means GPA's main control center located at [] or such other control center designated by GPA from time to time (but not more than one center at a time) which shall issue Dispatch Instructions to Project Company.

"Pre-Existing Site Condition" means any obstructions on, under, in, or affecting the Site or any contamination that could not have been discovered by an experienced international engineering and construction contractor using the most sophisticated devices and personnel available at the time of Site investigation by such contractor but shall not, for the avoidance of doubt, include archaeological discoveries on the Site.

"Pre-Existing Site Condition Period" means the period from the date of this Agreement to the date falling 12 months after the issuance of Notice to Proceed under the Construction Contract.

"Price" means the price of electricity charged by Project Company to GPA and calculated in accordance with the formulas in Schedule 5.

"Project" means the development, design, engineering, financing, refinancing, insurance, procurement, construction, startup, testing, Commissioning, completion, ownership, operation and maintenance of the Facility, all activities incidental thereto, and the Facility itself.

"Project Agreements" means collectively, the Energy Conversion Agreement, Land Lease Agreement, O&M Contract (if applicable), Construction Contract, and any other document, contract, or agreement executed subsequent to the date hereof by Project Company that is relevant to the construction and development of the Project or the ownership or management of Project Company (other than any Financing Document, Equity Document or Government Authorization) or otherwise mutually agreed in writing to constitute a "Project Agreement".

"Project Company" has the meaning set forth in the Preamble hereto.

"Project Company Default Transfer Price" means the applicable price set forth in Schedule 10 for the purchase of the Facility by GPA from Project Company pursuant to Article 5.5(f).

"Project Company Event of Default" has the meaning set forth in Article 5.2.

"Prolonged Force Majeure" means a condition in which a Force Majeure event has caused 50% or more of the Contracted Facility Capacity to be unavailable for dispatch for eighteen (18) consecutive months or more and is continuing.

"Proposal" means Project Company's written offer and amendments based on the covenants, terms and conditions as contained in the IFMSB for the development, financing, construction, ownership, operation and transfer of the Project.

IFMSB **"Prudent Utility Practices"** means those practices, methods, techniques and standards, as changed from time to time, that are generally accepted internationally for use in electric utility industries (taking into account conditions in Guam), and commonly used in prudent engineering and operation to design, engineer, construct, test, operate and maintain equipment lawfully, safely and economically as applicable to power stations of the size, service, and type (and operating with the contemplated Fuels) as the Facility.

"PUC" means the Public Utilities Commission of Guam.

"Remedial Actions" has the meaning set forth in Article 9.2.

"Renewable Component" means, for a hybrid plant, the part of the Facility which utilizes solar or wind power generation technology.

"Renewable Component Degradation Guarantee" means the Bidder's guaranteed rate of degradation for the Renewable Component as provided in Table 15.1 of Section D.

"Renewable Net Energy Output" means the portion of the Net Energy Output generated by the Renewable Component.

"Required Phase 1 Commercial Operation Date" means, with respect to Phase 1, the date falling [•] Days from Notice to Proceed, or such later date as may apply in accordance with the provisions of this Agreement.

"Required Phase 2 Commercial Operation Date" means, with respect to Phase 2, the date falling [•] Days from Notice to Proceed, or such later date as may apply in accordance with the provisions of this Agreement.

"Required Financial Closing Date" means [], or such later date as may apply in accordance with the provisions of this Agreement.

"Scheduled Outage" is a planned interruption of the generating capability of the Facility that:

- (a) is not a Maintenance Outage;
- (b) has been scheduled in accordance with Article 10; and
- (c) is for inspection, testing, Major Overhauls, preventive and corrective maintenance, repairs, replacement or improvement of the Facility.

"Security" means any one or more of the following: the Bid Guarantee, the Performance Bond, or the Transfer Security.

"Security Package" consists of:

- (a) this Agreement;
- (b) the LLA;
- (e) the Construction Contract;
- (f) the O&M Contract (if applicable);
- (g) the Financing Documents;
- (i) the bylaws and articles of Project Company;
- (j) the Equity Documents;
- (k) the insurance policies required to be obtained by Project Company pursuant to Article 15;
- (m) the documents creating or evidencing the security for the Lenders (including the Lenders' Direct Agreement);
- (n) all Government Authorizations, including a generation license issued in accordance with []; and
- (o) any other Project Agreements to which Project Company is party.

"Shares" means shares of Project Company with voting or other rights of management and/or control.

"Simple Cycle Unit" means the unit of the Facility formed by the combustion turbines and the supplementary equipment for generation of electric power.

"Site" means the land on which the Facility is to be installed (defined by the boundaries [Insert site plot designation or coordinates]), and has been leased by GPA to Project Company by means of the LLA.].

"Site Reference Conditions" means the physical and meteorological conditions at which the Facility would be operating under hypothetical representative circumstances as defined in Schedule 1.

"Start" means the process of starting up a Unit or the Facility until its synchronization, when the corresponding Unit or Facility has been shut down.

"Supplemental Charge" means any additional charges agreed by the Parties which are payable by GPA to Project Company as part of the Price payments.

"Technical Limits" means the limits and constraints described in Schedule 2 relating to the operation and maintenance of the Facility, and which shall be in accordance with the Functional Specifications.

"Term" has the meaning set forth in Article 5.1.

"Termination Notice" has the meaning set forth in Article 5.5(b).

"Testing" means the process of testing the Facility pursuant to Article 8.

"Threshold Capacity" means a Dependable Capacity equal to ninety (90%) per cent of the Contracted Facility Capacity.

"Transfer Date" means the date upon which all ownership, custody and control of the Facility shall be transferred from Project Company to GPA, which date shall be the final day of the Term unless mutually agreed otherwise.

"Transfer Security" has the meaning set forth in Article 18.4.

"Typical Meteorological Year" or "TMY" – means, for a hybrid or renewable Facility, the set of meteorological conditions relevant to the performance of such Facility's Renewable Component or a renewable Facility, which was provided by the awarded Bidder including any subsequent changes made by GPA.

"ULSD" means means ultra-low sulfur diesel fuel with maximum sulfur content of 15 ppm suitable for firing by diesel engine generators or combustion turbine generators meeting Fuel quality specifications contained in Schedule 7.

"ULSD Bulk Storage" means GPA's existing GPA ULSD bulk storage located near the existing Cabras power station to be modified by the Project Company as required under this Agreement.

"ULSD Storage Facilities" has the meaning set forth in Article 4.3.1 (g).

"ULSD Supply Infrastructure" means the ULSD Bulk Storage, and the ULSD supply pipeline between the ULSD Bulk Storage and the Site with all its associated systems, equipment, and accessories to be constructed by the Project Company and transferred to GPA on the Phase 1 Commercial Operation Date.

"Unit" means an individual gas turbine-generator, reciprocating engine-generator, or wind turbine-generator unit.

"Unit Available Capacity" means the capacity of each Unit (adjusted to Site Reference Conditions) announced by Project Company pursuant to Article 10.3(e).

"U.S. EPA" means the United States Environmental Protection Agency.

"Variable Operation and Maintenance Charge" has the meaning set forth in Schedule 5.

"Wilful Misconduct" means an intentional, conscious or reckless default in announcing an accurate Declared Capacity by a director, officer, manager or employee of Project Company exercising apparent authority to announce, or cause to be announced, a Declared Capacity, provided, however, that Wilful Misconduct shall not include any error of judgement or mistake made in good faith in the exercise of any function, authority or discretion arising under or in connection with the performance of this Agreement.

"Year" means a calendar year according to the Gregorian calendar beginning at midnight December 31 in Guam.

ARTICLE 2 INTERPRETATION

In this Agreement (including its Schedules), unless otherwise stated:

2.1 Any references to:

- (a) any agreement (including this Agreement) or document shall be construed, at any particular time, as including a reference to the relevant agreement or document as it may have been amended, novated, assigned, modified or supplemented in accordance with its terms;
- (b) the Preamble, Recitals or a particular Article or Schedule, shall be a reference to the Preamble, Recitals or relevant Article or Schedule in or to this Agreement;
- (c) a particular paragraph or sub-paragraph, if contained in an Article or Schedule, shall be a reference to the relevant paragraph or sub-paragraph of that Article or Schedule; and
- (d) a Party or any other person includes its successors in title, permitted assigns and permitted transferees.

2.2 Words in the singular may be interpreted as referring to the plural and vice versa.

2.3 A requirement that a payment be made on a Day which is not a Business Day shall be construed as a requirement that the payment be made on the next following Business Day.

2.4 The words "including" and "include" are to be construed as being at all times followed by the words "without limitation", unless the context otherwise requires.

2.5 For the purpose of any calculation under this Agreement, references to any period or periods of an hour or hours shall be rounded up to the nearest 1/10th of an hour.

- 2.6 The Schedules contained herein form an integral part of this Agreement. In the event of an inconsistency between the body of this Agreement and the Schedules thereto, the provisions of the body shall govern.
- 2.7 Where reference is made in this Agreement to a period or periods of time the periods in question shall be deemed to end at midnight on the last Day of such period unless otherwise stated.
- 2.8 Unless otherwise stated, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed.
- 2.9 In carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith.
- 2.10 Any capitalized term used but not defined in this Agreement shall have the meaning attributable thereto in the IFMSB.
- 2.11 The Parties agree that, should a situation arise where the provisions of Schedule 1 require clarification, then Form [] of the Proposal, to the extent relevant, would be used to interpret the provisions of Schedule 1, provided that this process in no event results in the modification of the Project Company's obligations hereunder or the imposition of obligations additional to those included in this Agreement.
- 2.12 Any reference to GPA's successors and permitted assigns shall be a reference to such successors and permitted assigns in all of GPA's capacities.

ARTICLE 3 RESERVED

ARTICLE 4 SALE AND PURCHASE OF CAPACITY AND ENERGY

4.1 Energy and Capacity

Subject to and in accordance with the terms and conditions of this Agreement, Project Company agrees to maintain and make available and deliver exclusively to GPA, and GPA agrees to accept and purchase from Project Company, from and after the Phase 1 Commercial Operation Date, for the consideration described in Article 14 and Schedule 5, the entire Dependable Capacity and, subject to Dispatch Instructions, the Net Energy Output of the Facility. GPA further agrees to pay to Project Company all amounts (and adjustments to amounts) described in Article 14.1 in the circumstances contemplated in Article 14.1. [Any Environmental Attributes associated with Dependable Capacity and Net Energy Output shall accrue to GPA's benefit.]

4.2 Sales to Third Parties and Test Energy

4.2.1 No Sales to Third Parties

The Parties agree that Project Company shall not during the Term sell or deliver electric capacity or energy produced by the Facility to any other entity than GPA.

4.2.2 No Payment for Test Energy

Prior to the Phase 1 Commercial Operation Date, GPA shall not pay for energy delivered to GPA during Testing and Commissioning.

4.3 Fuel Supply

4.3.1 Fuel Supply After COD

- (a) Commencing as of the Phase 1 Commercial Operation Date, GPA shall deliver Fuel to Project Company in compliance with the Fuel Specifications for each day of operation, at such times as it may be required by Project Company to satisfy the hourly dispatch requirements to be provided by GPA (the "**Fuel Supply Requirement**"). All Fuel required to be delivered by GPA to Project Company under this Article shall be delivered to the corresponding Fuel Delivery Point and shall be measured at the corresponding Fuel Measurement Point in accordance with the provisions set forth in Schedule 12. Project Company shall be responsible for the installation, operation and maintenance of the Fuel measurement facilities.
- (b) Unless Project Company informs GPA otherwise, the Fuel Supply Requirement shall be consistent with the Guaranteed Heat Rate specified in Schedule 2, adjusted to Site Conditions and expressed in BTUs per kWh. In the event the expected operating heat rate applicable to any period of operation is higher than the corresponding Guaranteed Heat Rate, Project Company shall inform the magnitude of the deviation, the likely cause of such deviation, and the way this deviation is going to be corrected. Project Company shall use its best efforts to meet the Guaranteed Heat Rate. GPA shall supply the Fuel Supply Requirement even if the expected operating heat rate is higher than the Guaranteed Heat Rate.
- (c) Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel to the Fuel Delivery Point with the operation of the Plant as follows: (x) by providing the other Party such information as the first Party shall reasonably request regarding the supply and transportation of the Fuel to the Fuel Delivery Point (on both a historical and estimated future basis); and (y) by maintaining personnel available at all times to address scheduling of Fuel supply and transportation.
- (d) Subject to the foregoing, GPA shall have the right to change the quantities of Fuel nominated and received on a daily basis, or more frequently, to the extent permitted, so long as such changes do not disrupt Project Company's operations.

- (e) GPA shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Fuel up to the Fuel Delivery Point. Project Company shall be deemed to be in exclusive control of, and responsible for any losses of Fuel, and any damages or injury caused by, such Fuel at and from the Fuel Delivery Point. GPA warrants that Fuel caused to be delivered hereunder to Project Company shall be free and clear of all liens or other encumbrances. Title to and risk of loss of all Fuel shall transfer from GPA to Project Company upon delivery to the Fuel Delivery Point.
- (f) GPA undertakes that all Fuel delivered at the Fuel Delivery Point shall meet the Fuel Specifications. Project Company shall have the right to reject Fuel which fails to meet the Fuel Specification at the Fuel Delivery Point ("Non-Conforming Fuel") provided that Project Company has made commercially reasonable efforts to receive such Non-Conforming Fuel. If Project Company erroneously rejects Fuel that in fact meets the Fuel Specification, Project Company shall be liable to GPA for all damages caused by said rejection and shall indemnify and hold GPA harmless therefor. If either Party becomes aware that Fuel that is being or will be delivered by GPA to the Project Company fails to meet the Fuel Specification, such Party shall inform the other Party of this fact as soon as possible after becoming aware thereof.
- (g) Project Company shall, in accordance with Schedule 1, construct and maintain storage facilities at the Site for the supply of ULSD for the operation of the Facility (the "ULSD Storage Facilities"). Such storage facilities shall be capable of holding an inventory equivalent to the amount of ULSD necessary to operate the Facility at the full Contracted Facility Capacity (in accordance with the Guaranteed Heat Rate) for at least fourteen (14) consecutive Days or such larger quantities as may be required by Lenders.
- (h) Project Company shall, in accordance with Schedule 1 finance, design and construct the ULSD Supply Infrastructure and transfer it to GPA at no cost on the Phase 1 Commercial Operation Date. GPA will own, operate, and maintain the ULSD Supply Infrastructure during the Term of the ECA.

4.3.2 Fuel Supply During Testing and Commissioning

- (a) GPA shall procure and deliver the Fuel required for start-up and commissioning prior to the Phase 1 Commercial Operation Date to the ULSD Bulk Storage pursuant to the specifications in Schedule 7. GPA shall pay for the Fuel required for start-up and commissioning up to a maximum of []MMBtu and Project Company shall pay for any Fuel required and delivered in excess thereof. The Project Company shall be responsible for the operation and maintenance of the ULSD supply infrastructure prior to the Phase 1 Commercial Operation Date and the cost of first fill of ULSD in an amount equal to the Fuel storage requirements in Article 4.3.1(g) (the "First Fill"). At least eighteen (18) Months prior to the Expected Phase 1 Commercial Operation Date, Project Company and GPA shall agree to a procedure to periodically estimate and forecast the necessary amount of Fuel expected to be required for commissioning and start-up, provided, however, that the final amount of Fuel required shall be set no later than 120 days prior to the Expected Phase 1 Commercial Operation Date.

4.4 Natural Gas Supply

The following is applicable for Natural Gas if and when it becomes available and if and when GPA so elects to supply Natural Gas to the Facility.

4.4.1 Natural Gas Procurement

At any time after the Phase 1 Commercial Operation Date, GPA, in its sole discretion may elect to supply Natural Gas to the Facility and require that the Facility burn Natural Gas. The procedure set forth in Article 8.2(f) and (g) of this Agreement shall apply to the implementation of this election.

4.4.2 Natural Gas Nominations by the Project Company

After receiving the daily Dispatch Instructions, the Project Company shall provide to GPA the Natural Gas daily nominations as required by the Project Company to satisfy the Dispatch Instructions. The detailed procedure for daily nominations and for renominations shall be determined by the Joint Coordinating Committee.

4.5 Fuel Cost Allocation

When GPA receives bills for Fuel supply and transportation for the Facility, GPA shall send a copy to the Project Company. Once received by the Project Company, the Joint Coordinating Committee shall meet to distribute the cost between the Parties. The Project Company shall be responsible for the cost of any Fuel consumed in excess of the quantity of Fuel that should have been required to produce the applicable amount of Net Energy Output had the Facility operated in compliance with the Guaranteed Heat Rate as adjusted to the operating parameters provided in the applicable Dispatch Instructions. In the event that, in any given hour or portion thereof, the Facility is unavailable to operate at 100% load due to a reason other than the fault of GPA, and this event does not occur during a Scheduled Outage or Maintenance Outage or occurs during a Scheduled Outage or Maintenance Outage after the Facility has exceeded its Allowable Total Outages Energy for the applicable Contract Year pursuant to Article 9.3, then the Guaranteed Heat Rate used to calculate the Fuel cost allocation shall be the Guaranteed Heat Rate applicable to the load at which the Facility would have been dispatched had the Facility been available to operate at 100% load.

4.6 Set-off for Fuel Costs

Any amounts owed to GPA by the Project Company with respect to Fuel, if any, shall be deducted from the monthly invoice as set forth in Article 14.

4.7 Non-Conforming Fuel

(a) If Fuel supplied by GPA fails to conform to the specifications set out in Schedule 7 or Schedule 9 as the case may be ("Non-Conforming Fuel"), Project Company may send a Notice to GPA notifying that Project Company has received Non-Conforming Fuel.

(b) GPA shall, promptly upon becoming aware of such delivery or promptly upon receipt of the Notice from Project Company referred to in paragraph (a) above, send a Notice to Project Company stating, to the extent known to GPA, the period during which the Non-Conforming Fuel was delivered, the quantity thereof

and how its specifications vary from the ones set out in Schedule 7 or Schedule 9, as the case may be.

- (c) If, after exercising commercially reasonable efforts to receive the Non-Conforming Fuel, Project Company determines that it is unable to accept, or operate the Facility, on such Non-Conforming Fuel, then it shall be under no obligation to accept such fuel. In the event that the Dependable Capacity would otherwise be available but for the delivery of Non-Conforming Fuel, then GPA shall remain obligated to pay the Capacity Charge.

ARTICLE 5

TERM, DEFAULTS AND REMEDIES

5.1 Term of Agreement

- (a) Except for the provisions of Article 1, 2, 5, **Error! Reference source not found.**, 7, 11, 16, 17, 19, 20, 22, 23, and 23 (which shall commence and be effective upon the date of signature of this Agreement), the term of this Agreement ("**Term**") shall commence and be effective upon Financial Close (provided that this Agreement shall be effective upon satisfaction or waiver of all conditions precedent other than the condition to achieve Financial Close if the only condition precedent to Financial Close that is not satisfied or waived is that any or all of this Agreement or other Project Agreement is not in full force and effect because Financial Close has not occurred) and shall terminate twenty five (25) Contract Years after the Phase 1 Commercial Operation Date, unless extended or earlier terminated pursuant to the provisions of this Agreement. The termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to the date of such termination.
- (b) On or before the end of the twenty-first (21st) Contract Year the Parties shall meet to discuss whether the Term of this Agreement shall be extended. To the extent the Parties agree to extend the Term, then the terms and conditions of this Agreement shall be negotiated and mutually agreed by the Parties, as required and appropriate. To the extent this Agreement is not extended, then this Agreement shall terminate in accordance with its terms and conditions, and the Parties shall commence the implementation of the Facility Transfer procedures set forth in Article 18.

5.2 Project Company Events of Default

The Project Company shall be in default under this Agreement upon the occurrence of any of the following events set forth in subsections (a) to (r) below (each a "**Project Company Event of Default**"); provided, however, that none of such events shall constitute a Project Company Event of Default if such event (a) results from a breach or default by GPA under this Agreement or the LLA or (b) occurs as a result of, or during, a Force Majeure pursuant to Article 17.

Subject to the provision in the preceding sentence, the following are Project Company Events of Default:

- (a) the failure of Project Company to achieve Financial Close by the Required Financial Closing Date [due to the failure of the Project Company, in the reasonable opinion of GPA, to use commercially reasonable efforts to do so];

- (b) the failure of Project Company to issue Notice to Proceed to the Construction Contractor within two (2) Business Days after Financial Close;
- (c) prior to the achievement of the Phase 1 Commercial Operation Date, an Abandonment occurs without GPA's prior written consent and continues for a period of thirty (30) consecutive Days from the receipt of a Notice from GPA;
- (d) the failure of Project Company to achieve the Phase 1 Commercial Operation Date within a period of one hundred and twenty (120 Days) after the Required Phase 1 Commercial Operation Date;
- (e) the failure of the Project Company to achieve the Phase 2 Commercial Operation Date within one hundred and twenty (120) Days after the Required Phase 2 Commercial Operation Date;
- (f) the failure of Project Company to submit the Performance Bond on or before Financial Close;
- (g) the failure of the Project Company to establish and maintain any Security in accordance with the terms of this Agreement; after the Phase 1 Commercial Operation Date, an Abandonment occurs without the prior written consent of GPA and continues for a period of fifteen (15) consecutive Days from receipt of a Notice from GPA;
- (h) the failure of the Facility to achieve the Threshold Capacity upon completion of the Phase 2 Commercial Operation Tests under Article 8.1 or, after the Phase 2 Commercial Operation Date, the failure of the Facility to (A) achieve a Dependable Capacity level equal to eighty-five (85%) per cent of the Initial Dependable Capacity after any Dependable Capacity Test and (B) achieve such level of Dependable Capacity after a later Dependable Capacity Test or otherwise make available to GPA such level of capacity, in each case no later than six (6) Months after the test mentioned in (A) above, provided that, in the case of a failure of equipment where the Project Company can demonstrate that replacement equipment has been ordered, or that a repair has been undertaken, as soon as reasonably practicable after the failure (taking into account the amount of time required to determine whether a repair can be achieved), but in any event no later than the end of such 6 Month period, such period shall be extended for as long as Project Company is awaiting delivery of such equipment or is otherwise diligently pursuing a cure of the cause of the failure, up to a maximum of fifteen (15) Months;
- (i) should the Facility experience more than 285 Outage Hours in each month for a period of six (6) consecutive Months, provided that, in the case of a failure of equipment where the Project Company can demonstrate that replacement equipment has been ordered, or that a repair has been undertaken, as soon as reasonably practicable after the failure (taking into account the amount of time required to determine whether a repair can be achieved), but in any event no later than the end of such six (6) Month period, such period shall be extended for as long as the Project Company is awaiting delivery of such equipment or is otherwise diligently pursuing a cure of the Forced Outage, up to a maximum of fifteen (15) Months;

- (j) Project Company's failure to operate, maintain, modify, or repair the Facility in accordance with Prudent Utility Practices and applicable environmental Laws, such that safety of persons and property (including the Facility) is materially adversely affected, and such failure shall continue unremedied for a period of thirty (30) Days after Notice from GPA, provided that where Project Company has implemented a remedial plan approved by GPA, such failure shall continue unremedied for a period of ninety (90) Days after Notice from GPA;
- (k) the occurrence of any of the following events: (i) the passing of a resolution by the Investors for voluntary liquidation (or other similar relief) of Project Company; (ii) the appointment of a liquidator by Project Company or by the Controller of Companies for liquidation of Project Company; (iii) submission of an application to a court of competent jurisdiction for mandatory liquidation of Project Company which application is not dismissed within ninety (90) Days, (iv) the issuance of a final and conclusive order by a court of competent jurisdiction for liquidation or winding up of Project Company; or (v) except as otherwise permitted under and pursuant to the Financing Documents or the Project Agreements, the transfer, conveyance, loss, or relinquishment to any person of Project Company's right to own and/or operate the Facility or any material part thereof or to occupy the Site without the prior written approval of GPA;
- (l) any statement, representation or warranty by Project Company in this Agreement proves to have been incorrect, in any material respect, when made and such failure or incorrect statement, representation, or warranty has a material and adverse effect on Project Company's ability to perform its obligations under this Agreement;
- (m) the failure of Project Company to make any payment or payments required to be made by it hereunder (other than payments disputed by Project Company in good faith and by Notice to GPA) within fifteen (15) Days of the due date for such payment;
- (n) any material breach by Project Company of this Agreement (other than any such breach referred to elsewhere in this Article 5.2), that is not remedied within sixty (60) Days after Notice from GPA to Project Company (which Notice shall (i) state that a material breach of this Agreement has occurred that could result in the termination of the Agreement; (ii) identify the material breach in question in reasonable detail; and (iii) demand remedy thereof);
- (o) the occurrence of a Project Company Event of Default under any project agreement (as such term is defined in each of such agreements respectively), which is not cured within the applicable cure period (if any) provided for therein;
- (p) Project Company makes an assignment of this Agreement or transfers or creates a lien on the Project in violation of Article 21.2;
- (q) The failure of Project Company to obtain or maintain the Governmental Authorizations which is not remedied within ninety (90) Days after Notice from GPA;
- (r) Except as otherwise provided in this Article 5.2, Project Company shall fail to comply with any of its other obligations under this Agreement and such failure

has a material adverse effect upon GPA, and such failure shall continue uncured for sixty (60) Days after notice thereof by Company, provided that if such failure is not capable of being cured within such period of sixty (60) Days with the exercise of commercially reasonable efforts, then such cure period shall be extended for an additional reasonable period of time (not to exceed one-hundred-twenty (120) Days) so long as Project Company is exercising commercially reasonable efforts to cure such failure;

GPA shall deliver to the Lenders' agent ("**Agent**") (in accordance with the Lenders' Direct Agreement) a copy of any Notice given under this Article 5.2.

5.3 GPA Events of Default

GPA shall be in default under this Agreement upon the occurrence of any of the following events set forth in subsections (a) to (e) (each a "**GPA Event of Default**"); provided, however, that none of such events will constitute a GPA Event of Default if such event (i) results from a breach or default by Project Company under this Agreement or the LLA, or (ii) occurs as a result of a Force Majeure pursuant to Article 17. Subject to the proviso in the preceding sentence, the following are GPA Events of Default:

- (a) the submission for voluntary liquidation (or other similar relief) of GPA by GPA or any Government Entity with the authorization to make such submission, the appointment of a liquidator by GPA [or the Public Utilities Commission], the submission of an application to a court of competent jurisdiction for mandatory liquidation of GPA which application is not dismissed within ninety (90) Days, or the issuance of a final and conclusive order by a court of competent jurisdiction for liquidation or winding up of GPA;
- (b) any default or defaults by GPA in the making of any payment or payments (other than payments disputed by GPA in good faith and by Notice to Project Company) required to be made by it within thirty (30) Days of the due date for such payment;
- (c) any material breach by GPA of this Agreement (other than any such breach referred to elsewhere in this Article 5.3) that is not remedied within sixty (60) Days after Notice from the Project Company to GPA (which Notice shall (i) state that a material breach of this Agreement has occurred that could result in the termination of this Agreement, (ii) identify the material breach in reasonable detail and (iii) demand remedy thereof);
- (d) any statement, representation, or warranty made by GPA in this Agreement proves to have been incorrect in any material respect when made, and such failure or incorrect statement, representation, or warranty has a material and adverse effect on GPA's ability to perform its obligations under this Agreement; or
- (e) the occurrence of a GPA Event of Default under the LLA (as such term is defined therein) which is not cured within the applicable cure period (if any) provided for therein.

The Project Company shall deliver to the Agent a copy of any Notice given under this Article 5.3.

5.4 GPA Early Termination and Termination for Prolonged Force Majeure

- (a) GPA shall have the right to terminate this Agreement for convenience at any time subject to the terms and procedures set forth in Article 5.5(e).
- (b) GPA shall have the right to terminate this Agreement during a Prolonged Force Majeure, subject to the terms and procedures set forth in Article 5.5(g), unless the Project Company is exercising its [best efforts] to resolve the impact of the underlying Force Majeure event on the Project's performance and that such resolution is reasonably expected to occur within three (3) months and result in the Facility operating, on a continuing basis, with an annual availability of 90% or more.

5.5 Termination Notices and Rights

- (a) Upon the occurrence of a GPA Event of Default or a Project Company Event of Default, as the case may be, the non-defaulting Party may, subject to the Lenders' Direct Agreement at its option, initiate termination of this Agreement by delivering a Notice (a "**Notice of Intent to Terminate**") of its intent to terminate this Agreement to the defaulting Party and the Agent. The Notice of Intent to Terminate shall specify in reasonable detail the Project Company Event of Default or the GPA Event of Default, as the case may be, giving rise to such Notice.
- (b) Following the delivery of a Notice of Intent to Terminate, the Parties shall consult for a period of up to forty-five (45) Days in the case of a failure by either Party to make payments when due, and up to sixty (60) Days with respect to any other Event of Default (or such longer period as the Parties may mutually agree), as to what steps shall be taken with a view to mitigating the consequences of the relevant Event of Default taking into account all the circumstances. During the period following the delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the Event of Default, and if the Event of Default is cured at any time prior to the delivery of a Termination Notice in accordance with Article 5.5(b) then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured Event of Default.
- (c) Upon expiration of the consultation period described in Article 5.5(a) and unless the Parties shall have otherwise agreed or unless the Event of Default giving rise to the Notice of Intent to Terminate shall have been remedied, the Party having given the Notice of Intent to Terminate may, subject to the Lenders' Direct Agreement and the conditions set forth in sub-sections (d)-(h) below, terminate this Agreement by delivery of a Notice (a "**Termination Notice**") to the other Party and the Agent, whereupon, subject to the Lenders' Direct Agreement, this Agreement shall immediately terminate.
- (d) In the event of a termination by Project Company due to a GPA Event of Default, GPA shall have the right, but not the obligation, to acquire the Facility from Project Company for the applicable GPA Default Transfer Price set forth in Schedule 10. In order to exercise such right, GPA shall provide Project Company with Notice of its election to acquire the Facility within sixty (60) Days of receiving the applicable Notice of Intent to Terminate from Project Company, after which the Parties will commence working together diligently and in good

faith to effect such transfer within forty-five (45) Days or as soon as practicable thereafter.

- (e) In the event of an early termination by GPA for convenience pursuant to Article 5.4, GPA shall be required to acquire the Facility from Project Company for the applicable Early Transfer Price set forth in Schedule 10. The Parties shall work together diligently and in good faith to effect such transfer within forty-five (45) Days of Project Company's receipt of GPA's early termination Notice or as soon as practicable thereafter.
- (f) In the event of a termination by GPA due to a Project Company Event of Default, GPA shall have the right, but not the obligation, to acquire the Facility from Project Company for the applicable Project Company Default Transfer Price set forth in Schedule 10. In order to exercise such right, GPA shall provide Project Company with Notice of its election to acquire the Facility within sixty (60) Days of the date Project Company received the Notice of Intent to Terminate from GPA, after which the Parties shall commence working together diligently and in good faith to effect such transfer within forty-five (45) Days or as soon as practicable thereafter.
- (g) In the event of a termination by GPA due to a Prolonged Force Majeure pursuant to Article 5.4, GPA shall have the right, but not the obligation, to acquire the Facility from Project Company for the applicable FM Transfer Price set forth in Schedule 10. In order to exercise such right, GPA shall provide Project Company with Notice of its election to acquire the Facility within sixty (60) Days of the date Project Company receives the applicable Notice of Intent to Terminate from GPA, after which the Parties will commence working together diligently and in good faith to effect such transfer within ninety 90 days or as soon as practicable thereafter.
- (h) Any transfer contemplated in sub-sections (d)-(g) above shall be free and clear of all liens or other encumbrances and shall include all right, title and interest in and to the Facility including all fixtures, fittings, plant and equipment (including all test equipment, special tools, as-built drawings, software, documents, reports, analyses, all relevant files, plant procedures and forms as reasonably required and necessary for GPA to effectively operate the Facility after the transfer) and all improvements comprising the Facility.

5.6 Other Remedies

- (a) The exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or available at law, provided that, notwithstanding the above:
 - i. no Party may terminate this Agreement other than in accordance with the express terms of this Agreement;
 - ii. the termination rights, rights to liquidated damages, and right to draw under the Performance Bond as expressly set out in this Agreement shall be the sole and exclusive remedies available to GPA against Project Company or the Project for any delay in Commissioning or failure of the Facility to be available or to meet the Dependable Capacity and/or outage requirements set out in this Agreement; and

- iii. The termination right and right to draw under the Bid Guarantee shall be the sole and exclusive remedies available to GPA against Project Company for failure to achieve Financial Close by the Required Financial Closing Date.
- (b) Subject to Article 5 and paragraph (a) above, remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.

ARTICLE 6

COVENANTS, REPRESENTATIONS AND WARRANTIES

6.1 Project Company Covenants

The Project Company hereby covenants and agrees with GPA to:

- (a) Develop, design, permit, engineer, finance, construct and complete the Facility in a good and workmanlike manner, only with materials and equipment that are new and of international utility-grade quality, and in all material respects in accordance with:
 - i. the Functional Specifications set forth in Schedule 1;
 - ii. the plans and specifications prepared in accordance with this Agreement;
 - iii. the Technical Limits set forth in Schedule 2;
 - iv. the EPA requirements;
 - v. all applicable Laws and the Government Authorizations;
 - vi. Prudent Utility Practices; and
 - vii. FERC and NERC requirements.
- (b) Design, engineer, construct and complete the Facility in such a manner as to provide, with proper maintenance and operation, that the useful life of the Facility will be at least equal to 30 years;
- (c) After the Phase 1 Commercial Operation Date, operate and maintain the Facility in all material respects, in accordance with:
 - i. the operating procedures developed pursuant to Article 7.4 and the Dispatch Instructions;
 - ii. the Technical Limits set forth in Schedule 2;
 - iii. the Guam and U.S. EPA requirements;

- iv. all applicable Laws and the Government Authorizations; and
 - v. Prudent Utility Practices.
- (d) Use all reasonable efforts to procure and maintain all Government Authorizations necessary for its performance under this Agreement;
 - (e) Engage only such advisors, representatives and experts as are experienced in the development, engineering, construction, financing, operation and maintenance of power stations similar to the Facility;
 - (f) Provide at its own risk and expense the necessary facilities and services for the safety, comfort and protection of its personnel;
 - (g) Work and cooperate in good faith with GPA with respect to all of GPA's obligations and rights hereunder.

6.2 GPA Covenants

GPA hereby covenants and agrees with Project Company to:

- (a) Work with and cooperate in good faith with Project Company with respect to all of Project Company's obligations and rights hereunder;
- (b) [Upon request by Project Company, GPA shall use its reasonable efforts to support Project Company in obtaining the Government Authorizations required by the provisions of Article 7.]

6.3 The Project Company Representations and Warranties

The Project Company hereby represents and warrants at the date of this Agreement that:

- (a) The Project Company is a company duly organised, validly existing and in good standing under the Laws of Guam, and Project Company has all requisite corporate power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement;
- (b) The execution, delivery and performance by Project Company of this Agreement have been duly authorised by all necessary corporate action on the part of Project Company, and do not and will not:
 - i. require any consent or approval of Project Company's Board of Directors, shareholders or partners other than those which have been obtained (evidence of which consents and approvals shall be, if it has not heretofore been, delivered to GPA upon its request), or
 - ii. violate or result in a breach of, or constitute a default under any provisions of Project Company's articles and memorandum of association or bylaws or other organic documents, or any material indenture, contract, or agreement to which it is a party or by which it or its properties may be bound, or any material law, rule, regulation, order, writ, judgment,

injunction, decree, determination, or award presently in effect applicable to Project Company.

- (c) To the best of Project Company's knowledge, no Government Authorization or approval by any other Government Authority is necessary for the due execution, delivery and performance by Project Company of this Agreement;
- (d) This Agreement is a legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms; and
- (e) There is no pending or, to the best of Project Company's knowledge, threatened action or proceeding against Project Company before any court, Government Authority or arbitrator that could materially and adversely affect the financial condition or operation of Project Company or the ability of Project Company to perform its obligations hereunder, or that could affect the legality, validity or enforceability of this Agreement (as in effect on the date hereof).

6.4 GPA Representations and Warranties

GPA hereby represents and warrants at the date of this Agreement that:

- (a) GPA is a public corporation and an enterprise fund of the Government of Guam established by the Guam Power Authority Act of 1968, duly organized, validly existing, and in good standing under the Laws of Guam, and has all requisite corporate power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.
- (b) The execution, delivery and performance by GPA of this Agreement have been duly authorized by all necessary corporate or Government action, and do not and will not:
 - i. require any consent or approval of GPA's Board of Directors, shareholders, officers, or officials other than those which have been obtained (evidence of which consents and approvals shall be, if it has not heretofore been, delivered to the Project Company upon its request);
 - ii. violate or result in a breach or constitute a default under any provisions of GPA's articles and memorandum of association or bylaws, or other organic documents, or any material indenture, contract, or agreement to which it is a party or by which it or its properties may be bound, or any material law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect applicable to GPA.
- (c) To the best of GPA's knowledge, no Government Authorization or approval by any other Government Authority is necessary for the due execution, delivery and performance by GPA of this Agreement other than [].
- (d) This Agreement is a legal, valid, and binding obligation of GPA, enforceable against GPA in accordance with its terms.
- (e) There is no pending or, to the best of GPA's knowledge, [threatened action or proceeding against GPA before any court], Government Authority, or arbitrator

that could materially and adversely affect the financial condition or operation of GPA or the ability of GPA to perform its obligations hereunder, or that could affect the legality, validity or enforceability of this Agreement (as in effect on the date hereof).

6.5 Not used.

6.6 Not used.

ARTICLE 7 PRE-OPERATIONAL PERIOD

7.1 Permits, Licenses and Approvals

Prior to the Phase 2 Commercial Operation Date, Project Company shall, at its own expense, obtain and maintain all Government Authorizations or any other permit, license, approval or authorization required to be obtained and maintained by Project Company as and when required to comply with its obligations under this Agreement, including reaching Financial Close by the Required Financial Closing Date, achieving the Phase 1 Commercial Operation Date by the Required Phase 1 Commercial Operation Date, and achieving the Phase 2 Commercial Operation Date by the Required Phase 2 Commercial Operation Date.

7.2 Documents to be Submitted by Project Company

Project Company shall provide the following documents to GPA:

- (a) As soon as available but no later than the earlier of Financial Close and Notice to Proceed, a complete copy of the Construction Contract, including all exhibits and schedules thereto, and complete plans and specifications for the construction of the Facility, including drawings and interconnection points for SCADA and AGC, as soon as practical as these are completed, provided that the Project Company shall be entitled to request approval from GPA to redact certain commercial terms from the copy of the Construction Contract.
- (b) As soon as available but no later than the earlier of Financial Close and Notice to Proceed, a complete copy of the O&M Contract (if applicable), including all exhibits and schedules thereto, provided that Project Company shall be entitled to request approval from GPA to redact certain commercial terms from the copy of the O&M Contract supplied to the GPA.
- (c) As soon as available but no later than Financial Close, a complete copy of [placeholder for any other relevant agreements].
- (d) On or before Financial Close, complete copies of all Government Authorizations that have been issued to Project Company for the design, financing, construction, operation and maintenance of the Facility.
- (e) As soon as available, copies of all Government Authorizations other than those provided under the preceding clause that have been issued to Project Company or the Contractors (as applicable) for the design, financing, construction, operation and maintenance of the Facility.

- (f) On or before Financial Close, a copy of Project Company's quality control program, [safety program, environmental compliance program, and security (including cybersecurity) program, each] with respect to all aspects of the design, engineering, equipping, construction, and operation and maintenance of the Facility.
- (g) On or before the Construction Start Date, complete copies of all insurance policies and certificates of insurance required for construction as indicated in Article 15, provided that Project Company shall be entitled to redact from the copy of the insurance policies supplied to GPA, all commercial terms and all other information that Project Company reasonably considers to be of a confidential or proprietary nature.
- (h) As soon as available, but not later than the Phase 1 Commercial Operation Date, complete copies of all insurance policies and certificates of insurance obtained pursuant to Article 15 other than those provided under the preceding clause.
- (i) At least one hundred and twenty (120) Days (or such other period as shall be agreed between the Parties) before the scheduled commencement of the Testing and Commissioning for Phase 1, detailed programs and protocols to be used during the Testing and Commissioning of the Facility consistent with the provisions of this Agreement, including Article 8 and Schedule 4. The GPA Engineer and GPA shall have the opportunity to comment on the proposed program and protocols within thirty (30) Days of receipt from Project Company of said documentation, and the GPA Engineer, GPA, and Project Company will work together to agree on the procedures and protocols to be used for Testing and Commissioning not later than sixty (60) Days prior to the scheduled commencement of the respective Testing and Commissioning.
- (j) At least sixty (60) Days before the scheduled commencement of the Phase 1 Commercial Operation Tests, the intended start up and test schedule.
- (k) Not later than thirty (30) Days after the Commercial Operation Date for each Phase, copies of all test results, certified by the GPA Engineer, for the Commercial Operation Tests performed with respect to such Phase.
- (l) All the drawings, manuals, procedures, and other technical documents listed in Schedule 1 at the time specified in Schedule 1.

7.3 Supply of Power

- (a) The Project Company will arrange for the supply of all electrical energy and capacity required for construction of the Facility through (i) self-generation, or (ii) to the extent available, through making arrangements to purchase construction power from the GPA.
- (b) GPA will arrange for backfeed power to be available at the Harmon Substation as required for testing and commissioning in accordance with the parameters set forth in Schedule 8. Any such backfeed power shall be charged to Project Company at the prevailing rates applicable to such power.

- (c) Project Company will arrange for the supply of all electrical energy and capacity required for the maintenance and operation of the Facility by (i) generating it with Project Company's own facilities, or (ii) to the extent available, using backfeed power through GPA's Harmon substation. Any such backfeed power, to the extent it is supplied by GPA, shall be paid to GPA by Project Company at the then current rate for electricity at that location.

7.4 Operating Procedures

- (a) Not later than one hundred eighty (180) Days before the Required Phase 1 Commercial Operation Date, Project Company shall provide GPA with a first draft of its proposed operating procedures dealing with all operation interfaces between GPA and Project Company, including the method of day-to-day communication, key personnel lists, clearances and switching practices, outage scheduling, capacity and energy reporting, operating log and reactive power support, which procedures shall be consistent with this Agreement, the designs of the Facility and the Grid System (including the principles and guidelines developed by GPA for the Grid System as part of and in accordance with the applicable system grid code and as provided to Project Company), and Prudent Utility Practices (the "Operating Procedures"). GPA shall cooperate with Project Company, including by providing responses to reasonable requests for information submitted by Project Company in preparation of the Operating Procedures.
- (b) Within ninety (90) Days after GPA's receipt of the first draft of the Operating Procedures, GPA shall notify Project Company of any requested deletions, amendments or additions which, in the exercise of GPA's reasonable judgment, are necessary or desirable. Project Company shall make any deletions, amendments or additions that GPA reasonably requests unless such requests would be inconsistent with this Agreement, the designs of the Facility, and the Grid System or Prudent Utility Practices. GPA may, from time to time, require the Operating Procedures to be revised to conform to any duly established grid code binding on GPA to the extent that those revisions are not inconsistent with the terms of this Agreement, the designs of the Facility, the Grid System (including the principles and guidelines developed by GPA as part of and in accordance with the applicable system grid code for the Grid System), and Prudent Utility Practices.

7.5 GPA Observation Visits

GPA shall have the right, upon reasonable prior Notice, and subject to the safety rules and regulations of Project Company, to have its agents or employees at the Site at any time; provided that (i) such visits do not unreasonably interfere with the construction, testing, Commissioning, operation or maintenance of the Facility and (ii) such visits are at GPA's own expense. All persons visiting the Facility on behalf of GPA shall comply with the reasonable instructions and directions of Project Company and/or its Contractors. GPA shall bear responsibility for any claim, demand, action, proceeding, loss or damage to such persons or any property of Project Company caused by the negligence or wilful misconduct of any persons visiting pursuant to this Article 7.5 or the negligence or wilful misconduct of GPA during such visits. Insurance policies issued to Project Company must also cover GPA personnel and the GPA Engineer during their visits to the Site during the Term.

7.6 Project Company Progress Reports

Commencing on the date of this Agreement and continuing until the end of the Term, the Project Company shall submit progress reports to GPA prior to the fifteenth (15th) Day of each Month. Such reports shall cover in reasonable detail the progress in the development, permitting, financing, procurement, construction, and operation of the Facility for the preceding Month.

Prior to the Phase 2 Commercial Operation Date, the progress report shall include, as a minimum, an updated critical path schedule, a list of activities completed in the preceding month, a list of activities behind schedule and reasons therefor, a recovery plan for activities more than 30 days behind schedule, a safety report specifying all safety related incidents (e.g. fatalities, lost time accidents, and near misses), and a list and description of outstanding issues or concerns impacting, or reasonably expected to impact, the Project or its implementation schedule.

Subsequent to the Phase 1 Commercial Operation Date, the progress report shall include, as a minimum, an operational performance report (including hours of operation, gross and net capacity, heat rate, auxiliary load, number of trips, outages, or derations), description of maintenance activity, an updated maintenance plan, a safety report specifying all safety related incidents (e.g. fatalities, lost time accidents, and near misses), a list and detailed description of any environmental or security violations and a list and description of outstanding issues or concerns impacting the operation and maintenance of the Facility.

ARTICLE 8 TESTING OF THE FACILITY

8.1 Testing of the Facility Prior to the Commercial Operation Date

- (a) Project Company shall provide to GPA on an on-going basis relevant information regarding its program for testing the Facility, including any delay suffered, or reasonably anticipated to be suffered, in the date of synchronization of a Unit (or Facility) or to the Expected Phase 1 or Phase 2 Commercial Operation Dates.
- (b) Not less than sixty (60) Days prior to each of the Expected Phase 1 Commercial Operation Date and Phase 2 Commercial Operation Date, Project Company will deliver to GPA in writing the final program for testing, including the expected duration of Project Company's start-up and testing program and a tentative schedule for conducting all tests required by Schedule 4. Project Company shall advise GPA in writing of its final schedule for the testing program not less than fifteen (15) Days prior to the commencement of the tests required by Schedule 4. If the schedule for any test required by Schedule 4 is adjusted after Project Company has provided GPA with the final testing program schedule, Project Company shall advise GPA not less than seventy-two (72) hours prior to the commencement of any such test. On each Day beginning with the Day on which testing commences, Project Company shall provide GPA with a schedule of the tests to be conducted on the following Day or Days, if such test will continue for more than one (1) Day. All testing of the Facility shall satisfy the requirements provided in Schedule 4 and the procedures and protocols agreed upon by GPA, Project Company, and the GPA Engineer pursuant to Article 7.2(i). GPA will make all reasonable efforts to accept all the

energy generated by the Facility during the Period of Testing and enable full load operation of the Facility during Dependable Capacity Tests.

- (c) If GPA is unable to accommodate the schedule for such test or tests as provided by Project Company in the final schedule for the program of tests pursuant to the foregoing Article 8.1(b), GPA will give Project Company a Notice regarding deferral of any test or tests within seventy-two (72) hours of its receipt of the final schedule for testing, and the Parties will mutually agree on a date for any deferred test or program of tests.
- (d) Additional Commercial Operation Tests
 - i. Project Company shall be entitled to attempt as many Commercial Operation Tests as are necessary to ensure that each Phase is Commissioned in accordance with the requirements of this Agreement. Project Company shall give GPA not less than seventy-two (72) Hours' Notice of each additional Commercial Operation Test it desires to attempt.
 - ii. Notwithstanding Article i, if the results of a Commercial Operation Test satisfy the applicable minimum performance criteria for successful completion of such Commercial Operation Test, but Project Company is not satisfied with the results of such Commercial Operation Test, Project Company may request additional tests to establish the results of the Commercial Operation Test with at least seventy-two (72) Hours' prior Notice provided to GPA prior to a subsequent test; provided, however, that Project Company will continue to be responsible for any delay liquidated damages under Article 9.1 and will not be paid for capacity until it has notified GPA that Project Company has designated the test as the Commercial Operation Test in accordance with sub-clause (iii) below.
 - iii. When Project Company is satisfied with a test to establish the Phase 1 Commercial Operation Date or Phase 2 Commercial Operation date, as the case may be, Project Company shall notify GPA that Project Company has designated such test as the Commercial Operation Test. The Initial Dependable Capacity shall be set at any level successfully demonstrated during the Commercial Operation Test up to the Contracted Facility Capacity.
 - iv. The Phase 1 Commercial Operation Date and the Phase 2 Commercial Operation Date shall occur and payment for Capacity Charges shall commence as of the first Day after the Day the relevant Phase is Commissioned. In the event that Project Company is unable to demonstrate in the Phase 2 Commercial Operation Tests (carried out in accordance with the foregoing subparagraph (d)(i)) that the Facility is capable of operating at Threshold Capacity, GPA may terminate this Agreement as a Project Company Event of Default in accordance with Article 5.5.

8.2 Testing of Dependable Capacity and Heat Rate of the Facility after the Commercial Operation Date

The following provisions with respect to Testing the Facility after the Phase 2 Commercial Operation Date shall apply:

- (a) Dependable Capacity shall be tested annually after the Phase 2 Commercial Operation Date at times mutually agreed upon by Project Company and GPA. Project Company may, within twenty-four (24) hours of completion of a Dependable Capacity Test, reject the test and may conduct a retest at a time to be mutually agreed; provided, however, that Project Company cannot conduct more than two (2) retests of any Dependable Capacity Test before the level of capacity achieved during such a test is set as the Dependable Capacity. Project Company shall give GPA at least forty eight (48) hours' prior Notice of the first retest and twenty four (24) hours' prior Notice of the second retest, and any retest shall be conducted within ten (10) Days after the completion of the rejected test.
- (b) The test period for the Dependable Capacity Test shall be for six (6) continuous hours for a fossil fuel fired Facility or a Fossil Fuel Fired Component of the hybrid Facility. The test shall be run using the Metering System and plant instrumentation for measurements, unless otherwise decided by the Joint Coordinating Committee. The Dependable Capacity shall be the Net Energy Output (excluding any Excess Energy) during those six (6) hours corrected for Site Reference Conditions divided by six (6), but may not exceed the Contracted Facility Capacity. If, as the result of a Dependable Capacity Test, the tested capacity is shown to be above the Dependable Capacity in effect prior to such test, Project Company shall set the Dependable Capacity at the new tested capacity up to the Contracted Facility Capacity, and payments for the Dependable Capacity shall be increased accordingly, effective the Day such Dependable Capacity Test is completed. If, as a result of the Dependable Capacity Test, the tested capacity is shown to be below the Dependable Capacity in effect prior to such test, the Dependable Capacity will be reduced to the newly tested capacity, and payments for the Dependable Capacity shall be decreased to the tested level, effective the Day Dependable Capacity Test is completed.
- (c) Between annual tests, GPA may request one (1) additional Dependable Capacity Test if GPA reasonably believes that the currently set Dependable Capacity does not accurately reflect the Dependable Capacity previously declared to GPA. GPA shall provide written Notice of its request to test fourteen (14) Days prior to the requested test date. Project Company shall be entitled to one (1) retest of such Dependable Capacity Test before the level of capacity achieved during such a test is set as the Dependable Capacity provided that it rejects the test within twenty-four (24) hours of completing the Dependable Capacity Test. Each such Dependable Capacity Test and, as appropriate, any retest, shall be conducted in accordance with the foregoing Subsection (b), within ten (10) Days of its request or, as the case may be, the rejection, and Project Company shall give GPA not less than seventy-two (72) hours Notice of its intention to perform such retest.
- (d) Between annual tests, Project Company may:

- i. conduct one additional Dependable Capacity Test; and
- ii. in addition to Project Company's right to request an additional Dependable Capacity Test under Article i above, conduct (at Project Company's cost) one additional Dependable Capacity Test if GPA has elected to conduct an additional Dependable Capacity test mentioned in Article 8.2 (c) during a Forced Outage,

in each case, if Project Company reasonably believes that the currently set Dependable Capacity does not accurately reflect the Dependable Capacity that the Facility is able to achieve.

Each such Dependable Capacity Test carried out pursuant to this Article 8.2(d) shall be conducted in accordance with Article 8.2(b) and Project Company shall give GPA not less than seventy-two (72) hours' Notice of its intention to perform each such Dependable Capacity Test.

- (e) Notwithstanding anything to the contrary in this Agreement, no Dependable Capacity Test will be conducted during a Scheduled or Maintenance Outage, during the occurrence of a Force Majeure that affects the Facility, or while the consequences of such Force Majeure continue to affect the Facility. For the avoidance of doubt, the additional Dependable Capacity Test mentioned in Article 8.2(c) may be conducted during a Forced Outage.
- (f) If GPA requires the Facility to operate on Natural Gas in accordance with the provisions of Article 4.4:
 - i. GPA shall issue a Notice to Project Company stating the date, which shall not be less than 60 Days from the date of the Notice, starting from which it could start the supply of Natural Gas;
 - ii. Project Company shall be allowed a period of twenty five (25) Days following the date set forth in the above-mentioned Notice to implement the switch to Natural Gas and to perform the tests set forth in Schedule 4;
 - iii. during such twenty five (25) Day period, which shall be extended in case of occurrence of any Force Majeure event or unavailability of Natural Gas:
 - (A) The Facility shall be deemed to provide the Dependable Capacity and the Project Company shall receive the full Capacity Charge;
 - (B) GPA shall provide sufficient quantities of Natural Gas in order to allow Project Company to implement the switch;
 - (C) Provision of Natural Gas by GPA to Project Company up to [] MMBtu of Natural Gas (the "**Maximum Natural Gas Switch Quantity**") shall be at GPA's cost;
 - (D) Provision of Natural Gas by GPA to Project Company in quantities exceeding the Maximum Natural Gas Switch Quantity shall be at Project Company's cost;

(E) and Project Company shall perform the tests referred to in Schedule 4 and shall be required to conduct (including after the expiry of such period) as many retests as necessary to pass these tests in accordance with the provisions of Schedule 4.

(g) The Parties agree that the provisions of paragraph (f) above shall only apply when GPA elects to burn Natural Gas for the first time during the Term.

(h) GPA shall have the right to request that the Facility's heat rate be tested concurrently with any Dependable Capacity Test and Project Company shall be obligated to comply with such request.

8.3 Notice of and Compliance with Testing Procedures

Project Company shall carry out Commissioning of Phase 1 and Phase 2, the testing of the Initial Dependable Capacity at or prior to the Phase 1 and Phase 2 Commercial Operation Dates and the testing of the Dependable Capacity of the Facility thereafter in accordance with Articles 8.2 and Schedule 4. GPA shall use its reasonable efforts to comply promptly with all reasonable requests made by Project Company for assistance in carrying out such testing and Commissioning. GPA shall be given prior Notice of the testing or Commissioning procedure in accordance with Article 8.2 and shall be entitled to be present and observe any such testing and Commissioning. The procedures and results of such Tests shall be certified by the GPA Engineer.

8.4 Copies of Test Results

Project Company shall provide GPA with copies of the results of all tests performed pursuant to Schedule 4 and after every Major Overhaul of a generating Unit at the Facility. GPA shall not use or disclose such results other than in connection with the administration and enforcement of this Agreement or subject to applicable Law.

8.5 Deemed Commissioning

(a) In the event that for any reason (other than a breach by Project Company of its obligations under this Agreement or any other Project Agreement):

i. Due to (A) any action or inaction by GPA which is inconsistent with the terms of this Agreement (including any default or breach), [(B) the discovery of a Pre-Existing Site Condition, (C) any failure by GPA or any third party appointed by GPA to carry out remediation work in accordance with Article **Error! Reference source not found.**] or (D) unavailability of Fuel, a Commercial Operation Test is delayed beyond the date falling fourteen (14) Days before the Required Phase 1 Commercial Operation Date or Required Phase 2 Commercial Operation date (whichever is applicable), then upon receipt of a certificate from an Independent Engineer to the effect that the Facility is, or would have been, ready for testing by the relevant Required Commercial Operation Date, the Facility shall be deemed Commissioned for the respective Phase fifteen (15) Days after the relevant Required Commercial Operation Date (provided that for the avoidance of doubt the Project Company shall in no event be required to pay delay liquidated damages under Article 9.1 for such fifteen (15) Day period) and the Facility shall be deemed to be

providing Initial Dependable Capacity equal to the applicable Contracted Facility Capacity for the purposes of payments of Capacity Charges to be made by GPA to Project Company.

If the Facility has been deemed Commissioned for a Phase, the Commercial Operation Tests for such phase shall be conducted at the first available opportunity after such deemed Commissioning, and the Initial Dependable Capacity adjusted as a result of such test in accordance with subsection (b) below. Project Company shall use reasonable efforts to mitigate the delay caused by any of the events mentioned in this Article 8.5(a).

- (b) In the event that the Initial Dependable Capacity of the Facility at the Commercial Operation Tests after the Phase has been deemed Commissioned, is less than the applicable Contracted Facility Capacity, Project Company shall refund to GPA an amount equal to:
 - i. the difference, if any, between the applicable Contracted Facility Capacity and the Initial Dependable Capacity divided by the applicable Contracted Facility Capacity; times
 - ii. the total Capacity Charges paid between the date of deemed Commissioning and the date upon which the Initial Dependable Capacity Tests take place; provided, however, that in the event that the Initial Dependable Capacity for Phase 2 is less than the Threshold Capacity, the Project Company shall refund all Capacity Charges received based on deemed Commissioning.
- (c) If, due to a delay mentioned in Article 8.5(a), either or both of the actual Phase 1 Commercial Operation Date or the actual Phase 2 Commercial Operation Date does not occur within one (1) month of the relevant Required Commercial Operation Date, GPA shall indemnify Project Company for (i) the actual reasonable documented costs of demobilisation and remobilisation of personnel of Project Company, the O&M Contractor and of the Construction Contractor, and (ii) for any other actual reasonable documented costs payable to the Construction Contractor.

ARTICLE 9

LIQUIDATED DAMAGES PAYABLE BY PROJECT COMPANY

9.1 Delay in Commissioning

Project Company covenants that Phase 1 shall be Commissioned on or before the Required Phase 1 Commercial Operation Date. If the Phase 1 Commercial Operation Date has not occurred by the Required Phase 1 Commercial Operation Date, the Project Company shall pay GPA, as liquidated damages, for the delay in Phase 1 Commissioning a sum equal to **US\$ [TBD]** for each Day of delay or fraction thereof.

Project Company covenants that Phase 2 shall be Commissioned on or before the Required Phase 2 Commercial Operation Date. If the Phase 2 Commercial Operation Date has not occurred by the Required Phase 2 Commercial Operation Date, the Project Company shall pay GPA, as liquidated damages,

for the delay in Phase 2 Commissioning a sum equal to US\$ [TBD] for each Day of delay or fraction thereof.

In no event shall the damages assessed under this Article 9.1 exceed [US\$40,000,000].

9.2 Failure to Meet Contracted Facility Capacity

- (a) Project Company covenants that the Initial Dependable Capacity of Phase 1 shall not be less than the Contracted Phase 1 Capacity. In the event that upon completion of the Dependable Capacity Test used to establish the Initial Dependable Capacity of Phase 1 at or prior to the Phase 1 Commercial Operation Date, pursuant to Article 8, the Initial Dependable Capacity for Phase 1 is less than the Contracted Phase 1 Capacity, Project Company shall have the option for a period of up to six (6) months from the Phase 1 Commercial Operation Date to undertake any necessary actions ("**Remedial Actions**") to increase the Initial Dependable Capacity to the Contracted Phase 1 Capacity at its own cost. Within 15 Days of the expiration of such period or any decision by Project Company not to undertake Remedial Actions (whichever is the earlier to occur), Project Company shall pay to GPA, as liquidated damages, an amount equal to US\$ [TBD] per kW of the shortfall between the most recently determined Initial Dependable Capacity and the Contracted Phase 1 Capacity.
- (b) Project Company covenants that the Initial Dependable Capacity of Phase 2 shall not be less than the Contracted Phase 2 Capacity. In the event that upon completion of the Dependable Capacity Test used to establish the Initial Dependable Capacity of Phase 2 at or prior to the Phase 2 Commercial Operation Date, pursuant to Article 8, the Initial Dependable Capacity for Phase 2 is less than the Contracted Phase 2 Capacity (but greater than the Threshold Capacity), Project Company shall have the option for a period of up to six (6) months from the Phase 2 Commercial Operation Date to undertake Remedial Actions to increase the Initial Dependable Capacity to the Contracted Phase 2 Capacity at its own cost. Within 15 Days of the expiration of such period or any decision by Project Company not to undertake Remedial Actions (whichever is the earlier to occur), Project Company shall pay to GPA, as liquidated damages, an amount equal to US\$ [TBD] per kW of the shortfall between the most recently determined Initial Dependable Capacity and the Contracted Phase 2 Capacity.
- (c) In no event shall the damages assessed under this Article 9.2 exceed [US\$ 35,000,000].
- (d) Results of all Initial Dependable Capacity Tests and Dependable Capacity Tests shall be valid only to the extent such tests are performed while the Facility operates within the requirements of all Government Authorizations and the environmental permits.

9.3 Excessive Outages

- (a) Excessive Forced Outages

Project Company covenants that, in respect of each Contract Year, the Excessive Forced Outages Energy ("**EFOE**") for such Contract Year shall be less than or equal to zero (0).

In the event that, during any Contract Year other than the first Contract Year, the Excessive Forced Outages Energy is greater than zero (0), then Project Company shall pay to GPA, as liquidated damages, the Capacity Damages, calculated as follows:

$$\text{Capacity Damages (US\$)} = \text{Capacity Damages Amount (US\$/MW)} \times 1.4 \times \text{Excessive Forced Outages Energy (MWh)} / \text{eight thousand seven hundred sixty (8760) hours}$$

Where the Capacity Damages Amount equals the product of (i) the Capacity Charge per MW per Month prevailing during the relevant Contract Year and (ii) 12 Months.

- i. The Excessive Forced Outages Energy (EFOE) for any Contract Year, other than as modified in Article 9.3 for the first Contract Year, will be the sum of the actual Forced Outages (FOE) minus the Allowable Forced Outages Energy (AFOE), , namely:

$$\text{Excessive Forced Outages Energy (MWh)} = [\text{FOE} - (\text{AFOE})] \text{ (each term expressed in MWh)}$$

$$\text{FOE (MWh)} = \text{the summation of all periods of Forced Outage of this product: duration of outage (hours) x reduction in Dependable Capacity (MW).}$$

$$\text{AFOE (MWh)} = \text{Annual Average Dependable Capacity (MW) x [insert guaranteed maximum forced outage hours included in Bidder's Proposal] hours.}$$

- ii. If the EFOE for any Contract Year is less than or equal to zero, no liquidated damages are due.

(b) Excessive Total Outages

Project Company covenants that, in respect of each Contract Year, the Excessive Total Outages Energy ("**ETOE**") for such Contract Year shall be less than or equal to zero (0).

In the event that, during any Contract Year other than the first Contract Year, the Excessive Total Outages Energy is greater than zero (0), then Project Company shall pay to GPA, as liquidated damages, the Capacity Damages, calculated as follows:

$$\text{Capacity Damages (US\$)} = \text{Capacity Damages Amount (US\$/MW)} \times 1.4 \times \text{Excessive Total Outages Energy (MWh)} / \text{eight thousand seven hundred sixty (8760) hours}$$

Where the Capacity Damages Amount equals the product of (i) the Capacity Charge per MW per Month prevailing during the relevant Contract Year and (ii) 12 Months.

- i. The Excessive Total Outages Energy (ETOE) for any Contract Year, other than as modified in Article 9.3 for the first Contract Year, will be the sum of the actual total outages (FOE, MOE and SOE) minus the Allowable Total Outages Energy (ATOE), minus the difference between the Forced Outages (FOE) and the Allowable Forced Outages Energy (AFOE), namely:

<i>Excessive Total Outages Energy (MWh) = [FOE + MOE + SOE - (ATOE)] - [FOE - (AFOE)] (each term expressed in MWh)</i>	
<i>FOE (MWh)</i>	= the summation of all periods of Forced Outage of this product: duration of outage (hours) x reduction in Dependable Capacity (MW).
<i>MOE (MWh)</i>	= the summation of all periods of Maintenance Outage of this product: duration of outage (hours) x reduction in Dependable Capacity (MW).
<i>SOE (MWh)</i>	= the summation of all periods of Scheduled Outage of this product: duration of outage (hours) x reduction in Dependable Capacity (MW).
<i>ATOE (MWh)</i>	= Annual Average Dependable Capacity (MW) x [insert guaranteed maximum total outage hours pursuant to the availability guarantee included in Bidder's Proposal] hours.
<i>AFOE (MWh)</i>	= Annual Average Dependable Capacity (MW) x [insert guaranteed maximum forced outage hours pursuant to the forced outage rate guarantee included in Bidder's Proposal] hours.

- ii. If the ETOE for any Contract Year is less than or equal to zero, no liquidated damages are due.

9.4 Failure to Meet Guaranteed Amount of Renewable Energy

If the Facility is a hybrid Facility, the Project Company guarantees that, for each Contract Year, the Net Energy Output derived from the Renewable Component shall be equal to or greater than the Guaranteed Amount of Renewable Energy. After the end of each Contract Year, GPA shall verify the amount of Net Energy Output derived from the Renewable Component for such year and if it is less than the Guranteed Amount of Renewable Energy applicable to such year, the Project Company shall be liable for Renewable Component Liquidated Damages which shall be payable as part of the next monthly invoice. Renewable Component Liquidated Damages shall be equal to the amount of the annual shortfall (in kWh) multiplied by the average Energy Charge (in \$/kWh) for the applicable Contract Year.

9.5 Waiver of Defences

Notwithstanding that GPA may be substantially damaged in amounts that may be difficult or impossible to determine in the event that a Phase or Renewable Component (i) is not Commissioned by the date required, (ii) is not capable of achieving and maintaining the Contracted Phase 1 Capacity or the Contracted Facility Capacity or the Guaranteed Amount of Renewable Energy, (iii) cannot minimise the number of Forced Outages, or (iv) cannot achieve the designated operating levels, the Parties agree that the sums set out in this Article 9 constitute a genuine pre-estimate of the loss to GPA and as a result are fair and reasonable as liquidated damages and it is further understood and agreed that the payment of liquidated damages is in lieu of actual damages for such occurrences. Project Company hereby waives any defence as to the validity of any liquidated damages in this Agreement on the grounds that such damages are void as penalties.

9.6 Financial Close and Security Deposits

(a) Notice of Possible Delays to Financial Close

Project Company shall, promptly (and in no event later than seven (7) Days after becoming aware thereof) give written notice to GPA of the occurrence of any event which delays, or is reasonably likely to delay, Financial Close beyond the Required Financial Closing Date. Within fourteen (14) Days after any such initial notice, Project Company shall provide GPA with a further written notice substantiating such occurrence in reasonable detail, its effect on Project Company's ability to achieve Financial Close, and its effects, if any, on the Project, including financial implications. Further, Project Company shall thereafter provide such further information and updates as GPA may reasonably request from time to time in order to substantiate such occurrence and/or such effects.

(b) Extension of Required Financial Closing Date

If Project Company does not achieve Financial Close by the Required Financial Closing Date due to reasons other than an Excusable Event or other than Project Company's failure, then the Required Financial Closing Date shall be extended until the date that is ninety (90) Days after the original Required Financial Closing Date, provided that prior to any such extension, the validity period of the Bid Guarantee shall have been extended (by written amendment thereto delivered to GPA) until the extended Required Financial Closing Date.

(c) Failure to Achieve Financial Closing

In the event that Project Company fails to achieve Financial Close by the Required Financial Closing Date or extended Required Financial Closing Date, either Party may terminate this Agreement. In the event of such termination, GPA shall be entitled to cash the Bid Guarantee, in which event neither Party shall have any further liability or obligation to the other under this Agreement, except for liabilities accrued hereunder prior to or upon such termination (including liability for any breach of this Agreement by the Project Company).

(d) Financial Closing

At Financial Close, GPA shall return the Bid Guarantee to Project Company and Project Company shall provide to GPA a security deposit (the "**Performance Bond**") in an amount in Dollars equal to US\$75,000,000 to ensure Project Company's obligations to pay liquidated damages in accordance with Articles 9.1 and 9.2. The Performance Bond shall terminate three (3) Months after the Phase 2 Commercial Operation Date (or, in the case that Project Company opts to pursue Remedial Actions, six (6) months thereafter), at which point GPA shall return the Performance Bond to Project Company. The Performance Bond shall consist of either: (i) an unconditional and irrevocable direct pay letter of credit issued by an international bank with an investment grade rating in form and substance reasonably acceptable to GPA; (ii) a bank guarantee issued by an international bank with an investment grade rating in form and substance reasonably acceptable to GPA; or (iii) a performance bond issued by an international surety with an investment grade rating in form and substance reasonably acceptable to GPA.

9.7 Payments of Liquidated Damages

- (a) Within fourteen (14) Days after the end of (i) each Month in respect of amounts due pursuant to Articles 9.1 and 9.2, and (ii) each Contract Year in respect of amounts due pursuant to Article 9.3 and 9.4, GPA shall compute and advise Project Company by Notice (a "**Liquidated Damages Notice**") of the amount of liquidated damages, if any, due to GPA pursuant to this Agreement for the preceding Month or Contract Year, as the case may be. Subject to Article 9.7(b), Project Company shall pay to GPA the amount of liquidated damages shown on the Liquidated Damages Notice within ten (10) Business Days of the date of the Liquidated Damages Notice (the "**Liquidated Damages Due Date**"). If Project Company fails to pay any amount due pursuant to Article 9.1, 9.2, 9.3, and 9.4 by the Liquidated Damages Due Date, GPA shall be entitled to draw such amount from the Performance Bond. Interest shall accrue on any unpaid and undrawn amount from the Liquidated Damages Due Date until the date payment is made at the rate of the Bank Rate. Save to the extent that the amount of liquidated damages reflected on the Liquidated Damages Notice is paid to GPA by Project Company or, with respect to liquidated damages pursuant to Article 9.1, 9.2, 9.3, and 9.4, drawn from the Performance Bond, the amount of liquidated damages pursuant to Article 9.1, 9.2, 9.3, or 9.4 plus accrued interest due to GPA may be set off against amounts owed to Project Company by GPA on the next statement(s) submitted to GPA pursuant to Article 14.
- (b) In the event of any Dispute as to the computation or payment of liquidated damages, Project Company shall provide Notice to GPA specifying the amount disputed and the reason therefor. In such event, the amounts not disputed shall be paid as described in this Article 9 and the Dispute shall be settled in accordance with the Dispute resolution procedures set forth in Article 19. If any such Dispute is resolved in favor of GPA, the determination of amounts due to GPA shall include interest at the rate specified for late payment in Article 9.7(a). Upon resolution, the Project Company shall pay the amount determined to be owed to GPA within ten (10) Days of such resolution, failing which GPA shall be entitled to claim such amount from the Performance Bond, as applicable.

ARTICLE 10
CONTROL AND OPERATION OF THE FACILITY

10.1 Operating Procedures

The Facility shall be operated and maintained in accordance with the Operating Procedures.

10.2 Dispatch

- (a) The PSCC will issue Dispatch Instructions to establish the Net Energy Output that the Facility is expected to feed into the Grid System during forthcoming periods of time. In coordination with GPA, Project Company shall be responsible for determining the operating modes (including but not limited to the determination of how to load each Unit) that will result in the most efficient and reliable operation.
- (b) Project Company shall notify GPA and the PSCC whenever a Dispatch Instruction results in a part of or the whole Facility being operated beyond the Technical Limits. Project Company never has an obligation to operate and GPA never has a right to dispatch the Facility beyond the Technical Limits. The Operating Procedures shall establish the circumstances under which Project Company will trip a Unit, prior to such Unit being tripped by a protective device.
- (c) Dispatch Instructions shall indicate the total amount of Net Energy Output required during the relevant period, expressed as an amount in MW, which amount may not exceed the Declared Capacity unless and to the extent Excess Energy is available.

10.3 Scheduling of Capacities and Energy

GPA and Project Company shall cooperate in establishing the following scheduling for the Facility's Dependable Capacity and Net Energy Output:

- (a) Year-Ahead Notification: Not less than ninety (90) Days before the scheduled Commercial Operation Date for a Phase and thereafter not less than ninety (90) Days before the beginning of each Contract Year, GPA shall provide to Project Company good faith estimates of its requirements on a Monthly basis, for the Net Energy Output and the maximum capacity required during that Contract Year, but shall not be bound by those figures. GPA will also indicate the desired maintenance periods for the upcoming Contract Year.
- (b) Quarter-Ahead Notification: Not less than sixty (60) Days before each quarter of each Contract Year, GPA shall provide to Project Company good faith estimates of its requirements, on a week-by-week basis for the Net Energy Output and maximum capacity required during that quarter and also provisionally for the following quarter, but shall not be bound by those figures.
- (c) Month-Ahead Notification: Not less than fourteen (14) Days before each Month, GPA shall provide to Project Company good faith estimates of its requirements on a day-by-day basis, for the Net Energy Output and maximum capacity

required during that Month and also provisionally for the following Month, but shall not be bound by those figures.

- (d) Week-Ahead Notification: Not later than 12:00 noon on Thursday before each week beginning on each Saturday, GPA shall:
 - (i) provide Project Company estimated requirements, on an hour by hour basis, for the Net Energy Output and maximum capacity required during that week and also provisionally, during the following week, but shall not be bound by these figures; and
 - (ii) determine which Fuel shall be used each hour during that week.
- (e) Declared Capacity Notification: To enable GPA to give final schedules of requirements, Project Company shall notify the PSCC, by 8:00 a.m. each Day, of the Declared Capacity available during each hour of the following Day. However, Project Company may notify the PSCC, not less than twelve (12) hours prior to its scheduled occurrence, of any reasonable modification to the Declared Capacity schedule. The Notices that Project Company is required to send to GPA pursuant to this Article 10.3(e) shall include the number of MW available for each Unit during each hour of the following day and the amount and type of Fuel required to comply with the expected dispatch. The availability of the Facility shall be based, for the purposes of determining the Declared Capacity or calculating Outage Hours, on the availability of the Facility with the Fuel that GPA instructs the Project Company to run.
- (f) Day-Ahead Notification: Not less than 8 hours before the start of each Day the PSCC shall provide to Project Company firm requirements in accordance with Article 10.2(c), on an hour-by-hour basis for capacity during that Day and also, provisionally, during the following Day. The firm requirements shall be binding upon GPA; provided, however, Project Company shall not unreasonably withhold its consent to any reasonable request from GPA for an alteration to its requirements.
- (g) Information Related to Renewable Component: Project Company shall provide the PSCC with [real time] updates of the current production and the seven (7) day hourly production forecast for the Renewable Component.
- (h) The methods for scheduling the capacity may be modified from time to time. Such modifications may be initiated by GPA, the PSCC, or Project Company and must be approved by the Joint Coordinating Committee.

10.4 Scheduled Maintenance.

- (a) Project Company shall submit its desired schedule of Scheduled Outage periods (including the duration of each such period) to GPA six (6) months before the Required Phase 2 Commercial Operation Date and thereafter on [] 1st of each calendar year. Project Company shall use commercially reasonable efforts to schedule any Scheduled Outage periods during the period from [insert applicable month] to [insert applicable month] only or such other alternative periods as GPA may specify, provided that GPA does specify at least one (1) year in advance the alternative period and that the period available for Scheduled Outages is of equal duration to the period specified

herein. Within thirty (30) Days of receipt of such schedule, GPA shall notify Project Company in writing as to the acceptability of such schedule. Project Company shall use all reasonable efforts to make each such Scheduled Outage period of relatively short duration consistent with the Technical Limits, Prudent Utility Practices, and the recommendations of the manufacturers of the various components of the Facility. The Project Company shall use all reasonable efforts to perform maintenance of equipment connected with photovoltaic solar production between the hours of [8:00pm and 6:00am].

- (b) If GPA does not accept any one or more of the requested Scheduled Outage(s) periods, GPA shall advise Project Company within thirty (30) Days of the receipt of Project Company's notification in accordance with sub-section (a) above of the acceptable period when GPA determines any such unacceptable Scheduled Outage can be rescheduled. The rescheduled time shall be as close as reasonably practicable to the requested time, shall be consistent with the Technical Limits, Prudent Utility Practices and the recommendations of the manufacturers of the various components of the Facility, and shall be of the same duration as the requested period. If GPA fails within such thirty (30) Day period to object to any Scheduled Outage for which it receives Notice pursuant to subsection (a) above or fails within such period to advise Project Company of a substitute time, Project Company may schedule and conduct the Scheduled Outage(s) as initially requested.
- (c) Project Company shall schedule Scheduled Outages only at times determined as aforesaid; provided, however, that GPA may not require Project Company to schedule Scheduled Outages in a manner or time which is outside the Technical Limits, is inconsistent with Prudent Utility Practices or the recommendations of the manufacturers of the various components of the Facility.
- (d) Notwithstanding the fixing of a time for a Scheduled Outage pursuant to subsections (a), (b) and (c) above, GPA may, upon at least ninety (90) Days prior Notice and upon agreeing to pay the documented increased cost, if any, to the Project Company resulting therefrom, require Project Company to reschedule a Scheduled Outage; provided, however, (i) GPA shall not require such Scheduled Outage to be rescheduled for a period of shorter or longer duration or in a manner or time that is outside the Technical Limits, or inconsistent with Prudent Utility Practices or the recommendations of the manufacturers of the various components of the Facility, (ii) GPA shall not require that a single Scheduled Outage period be split into two or more periods without compensating Project Company for any additional costs incurred thereby, and (iii) GPA shall not require that a Scheduled Outage be brought forward any earlier than sixty (60) Days from the date of such Notice without the consent of Project Company.
- (e) Notwithstanding the fixing of a time for a Scheduled Outage pursuant to sub sections (a), (b) and (c) above, Project Company may request a rescheduling of any Scheduled Outage upon ninety (90) Days prior written Notice to GPA. GPA shall respond to such request within ten (10) Business Days and shall not unreasonably withhold its permission for such rescheduling.

- (f) When the need arises for a Maintenance Outage, Project Company shall advise GPA of such need and of the commencement and estimated duration of such work, and GPA shall allow Project Company to schedule such Maintenance Outage within a period of time that is reasonable under the circumstances, but in any event not to exceed the time required by the Technical Limits and Prudent Utility Practices. Project Company shall use all reasonable efforts to conduct such Maintenance Outage during off-peak hours, provided, however, that with respect to equipment used for photovoltaic solar production, the Project Company shall use all reasonable efforts to perform maintenance between the hours of [8:00pm and 6:00am]. Project Company may advise GPA orally of the above matters set forth in this subsection (f), and GPA shall respond orally within twenty-four (24) hours of such notice. GPA shall confirm its communication in writing within one (1) week of such oral notice.
- (g) For those years in which Project Company plans to conduct a Major Overhaul, Project Company shall submit its Major Overhaul schedule (including the number of Units subject to Major Overhaul and outage duration of each Unit for such period) to GPA, for each Contract Year, one year in advance by Notice. It is expected that a Major Overhaul will take place approximately every [] operating hours, both as defined by the manufacturer and will not exceed [] Days in any Contract Year. Project Company shall use commercially reasonable efforts to not schedule a Major Overhaul during the months of [insert month] through [insert month] inclusive. Within thirty (30) Days of receipt of this schedule, GPA shall notify Project Company in writing as to the acceptability of such schedule. If GPA does not accept this schedule, GPA shall advise Project Company within thirty (30) Days of receipt of such Schedule of the time when GPA determines the Major Overhaul can be rescheduled. The rescheduled time shall be as close as reasonably practicable to the requested time, shall be consistent with the Technical Limits, Prudent Utility Practices, and the recommendations of the manufacturers of the various components of the Facility, and shall be of equal duration as the requested period. If GPA fails within the allowed period to object to any Major Overhaul for which it receives Notice pursuant to this Article, or fails within such period to advise Project Company of a substitute time, Project Company may schedule the Major Overhaul as initially requested.

10.5 Emergencies

- (a) Project Company shall cooperate with GPA in establishing agreed Emergency plans for the Facility at least ninety (90) Days before the Required Phase 1 Commercial Operation Date, including recovery from a local or widespread electrical blackout and voltage reduction in order to curtail load.
- (b) On or after the Phase 1 Commercial Operation Date, Project Company shall, during an Emergency, within no more than fifteen (15) minutes of GPA's request, and more quickly if possible consistent with Prudent Utility Practices, supply such power as the Facility is able to generate; provided, however, that Project Company shall not be obligated to operate the Facility beyond the Technical Limits or beyond the limits which Project Company reasonably believes could result in a trip. If a Scheduled Outage or Maintenance Outage occurs or would occur coincident with an Emergency, Project Company, upon consultation

with GPA and at GPA's sole cost and expense, shall make all reasonable efforts to reschedule the Scheduled Outage or Maintenance Outage or, if the Scheduled Outage or Maintenance Outage has begun, expedite the completion of the work to restore power supply as soon as possible.

10.6 Maintenance of Operating Records

- (a) Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among, but not limited to, other records and data required hereby or elsewhere in this Agreement, Project Company shall maintain an accurate and up-to-date operating log at the Facility with records of:
 - i. Net Energy Output production for each demand period and Delivery Point, and bus voltage at all times (for this purpose Project Company shall install a computerized system that will maintain an agreed data base of all pertinent parameters, as determined by the Joint Coordinating Committee).
 - ii. Changes in operating status, Scheduled Outages, Maintenance Outages and Forced Outages; and
 - iii. Any unusual conditions found during inspections.
- (b) All such records required under Article 10.6(a) shall be maintained for a minimum of sixty (60) Months after the creation of such record or data; provided, however, that the Parties shall not dispose of or destroy any such records after such sixty (60) Month period without thirty (30) Days' prior Notice to the other Party. Either Party shall have the right, upon reasonable prior Notice to the other Party, and at reasonable times during normal office hours, to examine the records and data of the other Party relating to this Agreement or the operation and dispatch of the Facility within the Grid System at any time during the period such records and data are required hereunder to be maintained.

10.7 Annual Report

Project Company shall deliver to GPA an annual operating and maintenance report for each Contract Year, within two (2) Months following the expiration of each Contract Year. Such annual report must include the operation and maintenance report for the prior year and the anticipated operation and maintenance plan and Emergency plan for the upcoming year.

10.8 Facility Improvements

Subject to the prior written consent of Project Company and the Agent (in accordance with the Lenders' Direct Agreement), if Project Company shall be requested by GPA to (a) increase the generation capacity of the Facility or (b) add equipment, then Project Company shall (once all relevant details have been agreed by Project Company and GPA) implement and prosecute such request at GPA's expense.

Notwithstanding the first sentence of this Article 10.8, the Project Company shall not prosecute and implement such request until:

- (a) GPA and the Project Company shall have agreed on the feasibility, schedule and cost of such implementation and additional construction (if any), with capital costs and operational costs being recoverable through Supplemental Charges or by direct cost-plus reimbursement at the discretion of the Project Company;
- (b) the financing for such implementation and construction (if any) has been obtained; and
- (c) appropriate adjustments to the Price (if any), including the Capacity Charge and the Energy Charge, have been agreed, and taking into account any lost revenue due to necessary Facility outages and all other costs or Losses to be incurred by Project Company consequent upon implementation of such changes.

10.9 Reactive Power

If, due to instability in the Grid System, GPA requests Project Company to operate the Facility in a power factor range outside the range mentioned in Schedule 2, Project Company shall comply with such request, provided that (i) it shall not have any obligation to operate the Facility in such a way for more than 1 hour at a time if, in the opinion of Project Company, it could damage the Facility and (ii) Project Company shall never be required to operate the Facility in a manner that is inconsistent with the Functional Specifications or the Technical Limits and the Contracted Characteristics.

10.10 GPA Acces to Site

Project Company shall allow GPA to have reasonable access to the Site subject to prior notice by GPA. GPA personnel will be required to comply with all Project Company safety rules and procedures when accessing the site.

GPA will be allowed to access the on-site ULSD Storage Facilities, without the need for prior notice, to fuel GPA's tanker trucks at no charge.

10.11 Employment of former GPA Employees by the Project Company

GPA power facilities maintenance and operations employees who may be adversely affected or separated as a result of the commissioning of the Project, shall be granted a right of first refusal by the Project Company for employment at the Facility in positions for which they are qualified. For each case of hiring an existing GPA maintenance and/or operating employee, the Project Company shall advise GPA of their plan for hiring such employee and allow a minimum of six [6] months before beginning the employment period to allow GPA to adjust its' plant operation and maintenance activities. If requested by GPA, Project Company will make reasonable efforts to assist GPA with finding a temporary labor pool for positions at their existing power plants that will be vacated by personnel hired by the Project Company.

**ARTICLE 11
JOINT COORDINATING COMMITTEE**

11.1 Membership

Within ninety (90) Days from the date of this Agreement, the Parties shall establish a Joint Coordinating Committee of ten (10) members, with Project Company and GPA each appointing five (5) members. Each Party shall also appoint two (2) substitutes for each of its members. The substitutes must be appointed at least thirty (30) Days prior to being able to substitute for one of the members. Substitutes may attend the Joint Coordinating Committee meetings but cannot participate in them unless they are replacing a regular member.

The Joint Coordinating Committee shall meet at least once per month.

The chairmanship of the Joint Coordinating Committee shall rotate each year between the Parties, and the first chairman shall be appointed by GPA. The Joint Coordinating Committee shall develop procedures for holding meetings, keeping minutes of meetings, maintaining records and appointing and operating sub-committees as may be required.

11.2 Duties

The power and duties of the Joint Coordinating Committee shall include only the following:

- (a) coordination of the respective programs of the Parties for the permitting, design, construction and Commissioning of the Facility, the Fuel supply and transportation interfacing, and the Electrical Interconnection Facilities, and agreement where necessary upon the respective Commissioning procedures;
- (b) discussion of the steps to be taken upon shutdown or reduction in capacity for Force Majeure or any other reason;
- (c) coordination and modification, if required, of Operating Procedures, including day-to-day communications, dispatching procedures, and Emergency plans and procedures, and compliance with Operating Procedures;
- (d) coordination and modification, if required, of scheduled maintenance programs and scheduling and acceptance of performance tests and periodic tests;
- (e) review of maintenance records, including results of periodic tests, for compliance with manufacturers' maintenance instructions and recommendations;
- (f) coordination of annual, monthly, weekly, and daily forecasts or requirements for the Facility;
- (g) developing, monitoring, and auditing the procedures to record Dependable Capacity, reliability, Net Energy Output, and any other parameters that may influence the billing or liquidated damages arising from operation;
- (h) developing protocols for invoicing and for measuring Dependable Capacity and Net Energy Output;

- (i) developing detailed procedures with respect to Natural Gas (when available) daily nominations and renominations based on Dispatch Instructions, ambient conditions for the next day and data provided in the tables entitled "Guaranteed Heat Rates at Guaranteed Conditions" and "Guaranteed Heat Rate Correction Curve" contained in Schedule 5;
- (j) dealing with safety and security matters affecting the Facility, the Parties, and their Contractors;
- (k) consultation on Emergency plans developed by the Parties for recovery from a local or widespread electrical blackout;
- (l) review of metering and protective schemes and devices; and
- (m) any other matter agreed by the Parties affecting the operation of the Facility and the Grid System.

11.3 Scope and Effect

The Parties agree and acknowledge that the jurisdiction of the Joint Coordinating Committee shall be limited to liaison and consultation only and that any decisions or agreements of the committee shall not be binding upon the Parties absent express written agreement to the contrary. The resolutions, considerations and discussions taking place from time to time within the Joint Coordinating Committee shall at all times remain subject to the express provisions of this Agreement, and, accordingly the respective rights and obligations of the Parties under this Agreement (or otherwise) shall not be affected by Articles 11.1 to 11.2.

11.4 Special Reporting

During any period in which either of the six (6) Month periods mentioned in Article 5.2(g) or Article 5.2(h) are extended in accordance with Article 5.2(g) and Article 5.2(h), as applicable, the Joint Coordinating Committee will meet every fourteen (14) Days and the members of the Joint Coordinating Committee appointed by Project Company will report on the status of the measures taken by Project Company to cure the deficiency.

ARTICLE 12 ELECTRICAL INTERCONNECTION

12.1 Electrical Interconnection Facilities

The Electrical Interconnection Facilities shall be designed, procured, and constructed by Project Company. Upon achieving the Phase 1 Commercial Operation Date and GPA's written acceptance thereof, the ownership, custody and control of the Electrical Interconnection Facilities shall be transferred by Project Company to GPA, after which the latter will operate and maintain the facilities in accordance with Prudent Utility Practices and the applicable system grid code at no cost to the Project Company. The transfer of the Electrical Interconnection Facilities shall be at no cost to GPA.

12.2 Testing

The Parties shall cooperate in testing the Electrical Interconnection Facilities from time to time prior to the scheduled synchronization dates of each Phase and at such other times

thereafter as either Party may reasonably require. All such testing shall be carried out on a timely basis.

ARTICLE 13 METERING

13.1 Electrical Metering

The standards for performance measurement systems and testing are specified in Schedule 6.

- (a) All electrical metering devices used to measure Net Energy Output pursuant to this Agreement, and to monitor and coordinate operation of the Facility, shall be purchased, owned, installed and maintained by Project Company according to the specifications in Schedule 6. All electrical metering will be done jointly by the Parties, and each Party shall designate a representative for performing such metering. All electrical metering devices used to provide data for the computation of payments due under this Agreement shall be sealed, and the seal shall be jointly broken by the designated representatives of the Parties when such metering devices are to be inspected and tested or adjusted in accordance with Article 13.1(b) below. The number, type and location of such electrical metering devices shall be on the 115 kV high voltage bushings of the main power transformers and according to the single line diagram presented by Project Company and approved by GPA.
- (b) Project Company shall inspect, test, and calibrate all electrical metering devices upon installation and at least once every five (5) years thereafter. Project Company shall provide GPA with reasonable advance Notice of, and allow a representative of GPA to witness and verify such inspections, tests, and calibrations. Upon the written request by GPA, and in the presence of GPA, Project Company shall perform additional inspections, tests, or calibrations of the electrical metering devices within twenty (20) Days following the date of such written request. The actual expense of any such requested additional inspection, tests, or calibration shall be borne by GPA, unless, upon such inspection, tests or calibration, a metering device is found to register inaccurately by more than 0.2%, in which event the expense of the requested additional inspection or testing shall be borne by Project Company. If an electrical metering device is found to be defective or inaccurate, whether or not within the accuracy and repeatability tolerances set forth in Table 6.1 of Schedule 6, Project Company shall, at its own expense, adjust, repair, replace, and/or recalibrate the electrical metering device as near as practicable to a condition of zero error.
- (c) GPA may elect to install and maintain, at its own expense, back-up electrical metering devices at the Delivery Point in addition to (and identical to) those installed and maintained by Project Company, which installation and maintenance by GPA shall be in a manner reasonably acceptable to Project Company.

13.2 Adjustment for Inaccurate Electrical Meters.

If an electrical metering device fails to register, or if the measurement made by a metering device is found upon testing to be inaccurate, an adjustment shall be made

correcting all measurements by the inaccurate or defective electrical metering device for the Project for the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

- (a) By (i) integrating the capacity measurements obtained by the MW-meter readings which are registered every thirty (30) minutes in the PSCC, or (ii) by using the Declared Capacity, whichever is applicable; or
- (b) As may be agreed upon by the Parties; or
- (c) In the event that the Parties cannot agree on the amount of the adjustment necessary to correct the measurements made by any inaccurate or defective electrical metering device, the Parties shall use GPA's back-up electrical metering device, if installed, to determine the amount of such inaccuracy; so long as such electrical metering devices are tested and maintained in the same manner as Project Company's. In the event GPA's back-up electrical metering devices are also found to be outside the accuracy and repeatability tolerances set forth in Table 6.1 of Schedule 6, as are applied to Project Company's electrical metering devices under Article 13.1(b) above, the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Net Energy Output during periods of similar operating conditions when the electrical metering device was registering accurately.
- (d) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the electrical metering device, or (ii) the (120) Days immediately preceding the test which found the electrical metering device to be defective or inaccurate.

To the extent that the adjustment period covers a period of deliveries for which payment has already been made by GPA, GPA shall use the corrected measurements as determined in accordance with Article 13.2(a), (b), (c), or (d) hereof to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by GPA for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by GPA to Project Company. If the difference is a negative number, the difference shall be paid by Project Company to GPA, or in the sole discretion of GPA, the difference may take the form of an offset to payments due to Project Company by GPA. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives Notice of the amount due, unless GPA elects payment via an offset.

13.3 Natural Gas Metering

- (a) Natural Gas Metering Equipment
 - i. GPA at its cost shall be responsible to install and maintain primary Natural Gas measurement equipment at the gas metering station in the Natural Gas pipelines supplying Natural Gas to the Facility in accordance with Schedule 6. GPA shall read its meter(s) at that point and such readings shall be considered official meters.

- ii. Project Company may install Natural Gas backup measurement equipment downstream of GPA's measurement equipment for Natural Gas. In such case, Project Company shall be responsible for installing and maintaining the Natural Gas backup measurement equipment.
- iii. GPA's Natural Gas metering devices shall be inspected, tested, and calibrated by GPA at least once each three (3) years. If Project Company at any time desires a special test of any meter or the computer used in the operation of the GPA's Natural Gas metering devices, it will promptly notify GPA and the Parties will then co-operate to secure a prompt test. All tests of GPA's Natural Gas metering devices shall be made at GPA expense, except that Project Company shall bear the GPA's reasonable cost of special tests made at the Project Company's request if the inaccuracy is found to be within 1%. Following each test, GPA shall ensure that GPA's Natural Gas metering devices shall be adjusted as required to record centrally and accurately.
- iv. Project Company's Natural Gas metering devices shall be inspected, tested, and calibrated by Project Company at least once each three (3) years. If GPA at any time desires a special test of any meter or the computer used in the operation of Project Company's Natural Gas metering devices, it will promptly notify Project Company and the parties will then co-operate to secure a prompt test. All tests of Project Company's Natural Gas metering devices shall be made at Project Company's expense, except that GPA shall bear Project Company's reasonable cost of special tests made at GPA's request if the inaccuracy is found to be within 1%. Following each test, Project Company shall ensure that Project Company's Natural Gas metering devices shall be adjusted as required to record centrally and accurately.

(b) Adjustment for Inaccurate Natural Gas Meters.

- i. If, for any reason, GPA's Natural Gas meters are out of service or registering outside the specified limits, so that the quantity of Natural Gas delivered cannot be ascertained or computed from the reading thereof, the Natural Gas delivered during the period such meters are out of service shall be determined upon the basis of the best data available, using the first of the following methods which is feasible:
 - (A) By using the quantity recorded by Project Company's Natural Gas meters, if installed and accurately registering;
 - (B) By adjusting for the error, if the extent of the error is ascertainable by calibration, test or mathematical calculation; or
 - (C) By estimation on the basis of deliveries (Net Energy Output) during preceding periods of similar demand under similar conditions when the equipment was registering accurately, and for purposes of this estimation, the Parties may agree upon using data from measurements from outside of the measurement facility.
- ii. In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which

the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Natural Gas metering device, or (ii) the (120) Days immediately preceding the test which found the Natural Gas metering device to be defective or inaccurate.

To the extent that the adjustment period covers a period of deliveries for which payment has already been made by GPA, GPA shall use the corrected measurements as determined in accordance with Articles 13.3(b) (i) or (ii) hereof to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by GPA for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by GPA to Project Company. If the difference is a negative number, the difference shall be paid by Project Company to GPA, or in the sole discretion of GPA, the difference may take the form of an offset to payments due to Project Company by GPA. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives Notice of the amount due, unless GPA elects payment via an offset.

13.4 ULSD Metering

(a) ULSD Fuel Metering Equipment

- i. GPA shall be responsible at its cost for installing and maintaining primary ULSD measurement equipment at the ULSD metering station in the ULSD pipelines supplying ULSD to the Facility in accordance with Schedule 6. GPA shall read its meter(s) at that point and such readings shall be considered official meters.
- ii. Project Company may install ULSD backup measurement equipment downstream of GPA's measurement equipment for ULSD. In such case, Project Company shall be responsible for installing and maintaining the ULSD backup measurement equipment.
- iii. GPA's ULSD metering devices shall be inspected, tested, and calibrated by GPA at least once each three (3) years. If Project Company at any time desires a special test of any meter or the computer used in the operation of the GPA's ULSD metering devices, it will promptly notify GPA and the Parties will then co-operate to secure a prompt test. All tests of GPA's ULSD metering devices shall be made at GPA expense, except that Project Company shall bear the GPA's reasonable cost of special tests made at the Project Company's request if the inaccuracy is found to be within 1%. Following each test, GPA shall ensure that GPA's ULSD metering devices shall be adjusted as required to record centrally and accurately.
- iv. Project Company's ULSD metering devices shall be inspected, tested, and calibrated by Project Company at least once each three (3) years. If GPA at any time desires a special test of any meter or the computer used in the operation of Project Company's ULSD metering devices, it will promptly notify Project Company and the parties will then co-operate to secure a prompt test. All tests of Project Company's ULSD metering devices shall be made at Project Company's expense, except that GPA shall bear Project Company's reasonable cost of special tests made at

GPA's request if the inaccuracy is found to be within 1%. Following each test, Project Company shall ensure that Project Company's ULSD metering devices shall be adjusted as required to record centrally and accurately.

- v. Project Company shall, or shall have other party(ies) on its behalf, install and maintain measurement equipment at the ULSD truck delivery stations with the coordination and approval of GPA. The specifications and the location for ULSD Fuel meters and the associated metering system are set forth in Schedule 12. The measurement equipment for each Fuel shall be installed next to the storage tank dedicated to the respective Fuel.
- vi. The Project Company's ULSD metering devices shall be inspected tested and calibrated in accordance with the provisions of Schedule 12.

(b) Adjustment for Inaccurate ULSD Meters.

- i. If, for any reason, Project Company's main ULSD meters are out of service or registering outside the specified limits, so that the quantity of ULSD consumed cannot be ascertained or computed from the reading thereof, the ULSD consumed during the period such meters are out of service shall be determined upon the basis of the best data available, using the first of the following methods which is feasible:
 - (A) By using the quantity recorded by Project Company's back-up ULSD meters, if accurately registering; or
 - (B) By adjusting for the error, if the extent of the error is ascertainable by calibration, test or mathematical calculation.
- ii. In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the ULSD metering device, or (ii) the (120) Days immediately preceding the test which found the ULSD metering device to be defective or inaccurate.

To the extent that the adjustment period covers a period of deliveries for which payment has already been made by GPA, GPA shall use the corrected measurements as determined in accordance with Articles 13.4(a) (i) or (ii) hereof to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by GPA for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by GPA to Project Company. If the difference is a negative number, the difference shall be paid by Project Company to GPA, or in the sole discretion of GPA, the difference may take the form of an offset to payments due to Project Company by GPA. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives Notice of the amount due, unless GPA elects payment via an offset.

ARTICLE 14 BILLING AND PAYMENT

14.1 Invoices

- (a) Invoices shall be prepared monthly by Project Company in accordance with this Article 14 for payment by GPA in Dollars, as specified in this Article 14.
- (b) GPA and Project Company shall read directly by their representatives or via billing centers the metering devices on the first Day of each Month at 00:00 or 10:00 a.m., commencing with the first Month of the Period of Testing.
- (c) Project Company shall render an itemized invoice to GPA by the tenth (10th) Day of each Month of the Term, commencing in respect of amounts due by GPA for deliveries of Net Energy Output and/or Dependable Capacity hereunder, with the first Month immediately following the Month in which the Phase 1 Commercial Operation Date occurs.
- (d) Not used.
- (e) Each itemized invoice for amounts due by GPA to Project Company under Article 14.1(c) for deliveries of Net Energy Output and/or Dependable Capacity hereunder in respect of any month from and after the Phase 1 Commercial Operation Date shall show, calculated, where applicable, in accordance with Schedule 5:
 - i. Net Energy Output delivered to GPA during each half hour of the previous Month and the total Net Energy Output for such Month;
 - ii. The Energy Charge for such Net Energy Output, and the Capacity Charge for the previous Month;
 - iii. Supplemental Charges, if any;
 - iv. any adjustments or offsets pursuant to Article 13, Article 9.7, or Article 18 hereof;
 - v. any adjustments pursuant to Article 14.3;
 - vi. any adjustments pursuant to Article 7.3(c);
 - vii. any adjustment pursuant to Article 4.3.2(a);
 - viii. the total amount in Dollars that is due from GPA to Project Company with respect to such deliveries of Net Energy Output and Dependable Capacity during the preceding Month, including, for the avoidance of doubt, the full Capacity Charge for the Dependable Capacity in the event that the Dependable Capacity is unavailable, in whole or in part, due to a request by GPA in accordance with this Agreement, due to a Scheduled Outage, due to a Maintenance Outage, due to a Forced Outage, due to a condition caused by GPA or by the Grid System, or due to the unavailability of Fuel during any period during which the Facility is deemed to provide the Dependable Capacity in Article 8.

14.2 Payment

Each invoice shall be paid within thirty (30) Days of receipt thereof, with those portions of the Price to be adjusted and calculated in accordance with Schedule 5.

GPA intends to make an initial lump sum payment of approximately \$50 million upon COD to reduce interest fees and payments over the contract term.

14.3 Estimates

In order that invoices may be rendered promptly after the end of each Month, it may be necessary, from time to time, to estimate certain factors involved in calculating the monthly billing. Adjustments for errors in such estimates shall be included in the invoice for the first Month following the time when the information necessary to make such corrections or adjustments becomes available.

14.4 Late Payment

If an invoice is not paid within thirty (30) Days of receipt thereof (the "**Invoice Due Date**"), interest on unpaid amounts shall accrue daily from the Invoice Due Date until the date upon which payment is made at the Bank Rate plus two percent (2%).

14.5 Disputed Amounts

In the event of any Dispute as to the Capacity Charge, Energy Charge, or the Supplemental Charges, GPA shall notify Project Company of the amount in dispute. In such event, the amounts not disputed shall be paid as described in this Article 14 and GPA shall either deposit in escrow with a commercial bank selected by GPA and reasonably acceptable to Project Company an amount equal to the disputed amounts on the date such amounts, if undisputed, would otherwise be due or furnish to Project Company an irrevocable and unconditional letter of credit issued by a commercial bank selected by GPA and reasonably acceptable to the Project Company in an amount equal to the disputed amounts. This letter of credit shall be in a form and substance reasonably satisfactory to Project Company. The Dispute will be settled in accordance with the Dispute resolution procedures set forth in Article 19. The resolution of the disputed amount shall include interest at the rate specified for late payment in Article 14.4. Upon resolution, the funds in the escrow account shall be disbursed in accordance with the resolution of the matter under Article 19.

14.6 Billing Errors

Any claim regarding an error in invoices previously paid shall be made (in accordance with Article 14.5 or 14.7) within fifteen (15) Business Days from the date of discovery of such error, but in any event no later than the date six (6) Months after the date of issuance of such invoice. If such claim is not made within the six-month period referred to in the previous sentence, the original invoice and the calculations therein shall be binding upon the Parties.

14.7 Inaccurate Meters

In the event adjustments to an invoice are required as a result of corrected measurements made with respect to inaccurate meters as described in Article 13.2, the Parties shall use the method of correcting measurements described in Article 13.2 to

recompute the amounts due from or to GPA for the Net Energy Output and, in the event of corrected measurements made in respect of any Dependable Capacity Test, the Dependable Capacity sold under this Agreement during the period of inaccuracy. If the total amount, as recomputed, due from a Party for the period of one inaccuracy varies from the total amount due as previously computed, and payment of the previously computed amount has been made, then, following agreement by the Parties on the amount due as a result of the recomputation, Project Company shall promptly issue an adjusted billing statement. The owing Party shall pay any amount owed as shown on such billing statement within thirty (30) Days of the issuance of the adjusted billing statement.

ARTICLE 15 INSURANCE REQUIREMENTS

15.1 Terms and Conditions

- (a) All insurance policies are subject to the jurisdiction and laws of the United States.
- (b) All insurance policies should be effected through insurers registered in the United States to the extent required by the Laws of Guam.
- (c) Re-insurance of all policies should be in accordance with the effective instructions issued by the insurance commission or any substitute authority and accordingly, insurers should prove that they have implemented the aforesaid instructions.
- (d) Insurance is subject to cut through clause and insured have the right to claim from either insurers or reinsurers or both of them.
- (e) Project Company shall not be obliged to obtain any insurance policies covering sabotage, war or terrorism risk.

15.2 Maintenance of Insurance Policies

- (a) Project Company shall obtain and maintain from and after Financial Close and throughout the term of this Agreement the policies of insurance set forth in the minimum coverage amounts (or if not set forth, on terms and conditions, including sub-limits, deductibles and exclusions that are obtained by independent power generators of comparable size, technology and location) and during the periods, provided, however, that such minimum amounts may be changed from time to time with the written consent of GPA, which consent may not be unreasonably withheld or delayed. In addition to the foregoing, the Project Company may obtain any additional coverage required by the Lenders or the Laws of Guam, or deemed necessary by Project Company. Project Company shall not be in breach of its obligations hereunder if and to the extent that any particular insurance policy, or amount of coverage or any particular term of policy is not or ceases to be available on commercially reasonable terms for reasons other than any negligence or default by, or the deterioration of the financial condition of Project Company from the date of execution of this Agreement.

- (b) In the event that any particular insurance policy or amount of coverage required to be maintained hereunder ceases to be available on commercially reasonable terms for reasons other than any negligence or default by, or the deterioration of the financial condition of Project Company from the date of this Agreement, Project Company shall notify GPA of such occurrence promptly upon becoming aware of it, and GPA shall have the option to procure such particular policy or amount of coverage and to require Project Company to reimburse it for the cost thereof up to an amount not exceeding the premium paid by Project Company immediately prior to such insurance becoming unavailable on commercially reasonable terms (provided that the terms of such policy and the insurers and reinsurers providing it are otherwise substantially the same as those of the policy that it replaces).

15.3 Insurance Requirements for the Construction Period

- (a) Cargo transportation insurance (imports and re-exported items):

This insurance shall cover all materials, equipments, machineries, spares and other items for incorporation into the Facility against all risks of physical loss or damage while in transit by sea and/or air and/or by land conveyance and/or sending by post from the country of origin anywhere in the world to the site, or vice versa, from the time the insured items leave the warehouse or the factory and/or place of storage for shipment to the site (final destination named in the policy), plus war, strikes, riot and civil commotions in accordance with the provisions of institute cargo clause "A", war, strikes, and civil commotions or land transit "All Risks clause".

Coverage shall be in an amount equal to the cost, freight and all other expenses and fees.

In the alternative, Project Company may satisfy its obligations hereunder by requiring the vendor of such items to insure them in the manner specified herein, provided the vendor names Project Company and the other parties and first provides Project Company with evidence of such insurance, a copy of which shall be provided to GPA upon request.

Name of insureds include Project Company, GPA and all other concerned parties.

- (b) Delay in start up following cargo transport insurance:

This insurance shall cover debt service and fixed costs incurred following delays in reaching the Required Commercial Operation Date as a direct result of physical loss or damage to the materials, equipments, machineries and other items in transit by sea and/or air and/or by motor truck to the site to the extent covered under the cargo transport insurance.

This insurance shall indicate indemnity period not less than one calendar year as from the date of the occurrence of the risk covered under the transport policy.

15.4 Insurances Required During Construction Period Plus Erection, Trial Testing and Commissioning Period Plus Debt Service and Fixed Operation and Maintenance Costs Loss Due to Delay

(a) Contractors all risks policy (C.A.R. Policy):

This insurance shall cover all permanent and temporary works at the site in the course of execution, including machinery and equipment for incorporation in the Facility, against all risks of physical loss or damage (other than nuclear risk, penalties, consequential losses, cash, vehicles, vessels and aircraft) and shall include cover for loss or damage caused by faulty design, defective workmanship and defective material. Coverage shall be not less than the probable maximum loss value of the items covered.

Coverage also shall include equipment, machinery used by the concerned parties plus removal of debris, and third party liability plus cross liability during the period of construction plus one calendar year maintenance period.

(b) Delay in start up following C.A.R. incidents:

This insurance shall cover debt service and fixed operation and maintenance costs incurred following delays in reaching the Required Commercial Operation Date as a direct result of physical loss or damage to the works to the extent that such loss or damage is covered under the C.A.R. policy.

(c) Professional indemnity policy:

This policy, which the Project Company shall have the option to obtain and maintain if it considers it necessary taking into account the financial standing of the Construction Contractor, covers any loss or damage due to negligence, error, mistakes, faults and/or defaults or any other risks cover under P.I. policy which occurred during the period of construction or erection.

This policy shall include a sum insured equal to the said losses and/or damage.

15.5 Insurances Requirements after Construction Stage

(a) Properties insurance:

Subject to all risks policy to cover buildings, structures, fittings, equipments, machineries, appliances and/or other items.

This insurance to cover the said properties against:

- ix. Fire and other allied perils plus debt service and fixed operation and maintenance costs due to fire and/or other allied perils.
- x. To cover the physical loss or damage due to sudden and unforeseen cause.
- xi. This policy shall include the machinery breakdown perils subject to Munich-Re specimen or similar policy wording and also to cover debt

service and fixed operation and maintenance costs due to machinery breakdown.

Note: Coverage shall be not less than the probable maximum loss value of the items covered. Indemnity period for debt service and fixed operation and maintenance costs due to fire or due to machinery breakdown is not less than one calendar year as from the date of occurrence of the original risk.

- (b) Workmen's compensations policy for all workers and employees in accordance with the provisions of Guam labour law.
- (c) Employer's liability towards temporary workers and other employees.
- (d) Motor insurance policy (comprehensive cover) to include third party liability plus the cars and all vehicles and spares and appliances.
- (e) Public liability insurance policy to cover any legal liability (bodily injuries and damages to property). Such policy should be sufficient to cover, at a minimum, US\$ [] for any one occurrence and in aggregate US\$ [] for bodily injuries and US\$ [] for property damages.

ARTICLE 16

LIABILITY AND INDEMNIFICATION

16.1 Limitation of Liability

Except as expressly provided in this Article 16, without prejudice to any rights to damages that either Party may have as expressly provided for in Articles 5, 9 and 17, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages or for loss of revenue or loss of profits. In respect of a breach of the provisions of this Agreement, neither Party shall have any liability to the other Party save as expressly stated in this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

16.2 Indemnification

- (a) GPA

Subject to Article 16.5, GPA shall indemnify Project Company and Project Company's officers, directors, shareholders and employees against, and hold Project Company and Project Company's officers, directors, shareholders and employees harmless from, at all times after the date hereof, any and all Losses, and any and all actions, claims and demands in respect of such Losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, Project Company or Project Company's officers, directors, shareholders or employees for personal injury or death to persons or damage to property arising out of the negligent or intentional acts or omissions of GPA in connection with this Agreement.

(b) The Project Company

Subject to Article 16.5, Project Company shall indemnify GPA and GPA's officers, directors, shareholders and employees against, and hold GPA and GPA's officers, directors, shareholders and employees harmless from, at all times after the date hereof, any and all Losses, and any and all actions, claims and demands in respect of such Losses, incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, GPA or GPA's officers, directors, shareholders or employees for personal injury or death to persons or damage to property arising out of the negligent or wilful default of Project Company in connection with this Agreement.

(c) Joint Negligence

Subject to Article 16.5, in the event that any Loss results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

16.3 Indemnification for Fines and Penalties

Any fines or other penalties incurred by Project Company for non-compliance with the applicable Laws of Guam or the Government Authorizations shall not be reimbursed by GPA but shall be the sole responsibility of Project Company, except to the extent that such non-compliance is caused by the negligence or intentional acts or omissions of GPA.

16.4 Notice of Proceedings

Each Party shall promptly notify the other Party of any Loss, claim, action, demand or proceeding in respect of which it is or may be entitled to indemnification under Article 16.2. Such Notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss, claim, action, demand or proceeding. Failure to give such Notice in a timely fashion shall not affect the indemnified Party's rights to indemnification except to the extent that the indemnifying Party is materially prejudiced thereby.

16.5 Limitation on Indemnification

- (a) Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement for any Loss that would otherwise be the subject of indemnification under this Agreement until all Losses of such Party arising during the current Contract Year exceed the equivalent of two hundred thousand Dollars (US\$ 200,000) in the aggregate in which case only the amount of Loss greater than two hundred thousand Dollars (US\$ 200,000) shall be subject to indemnification. For purposes of this Article 16.5, a Loss (or claim for indemnification) shall be deemed to arise in the Contract Year during which the event giving rise to the Loss (or claim for indemnification) occurred or, in the case where the event is continuing in more than one Contract Year, in the Contract Year during which the event ends, provided that a Party shall not be obliged to refrain from making a claim under this Article 16.5 (where it is otherwise entitled to do so) at the end of a given year ("**Year End**") by reason of the fact that the event in question ("**Relevant Event**") is still continuing, and

provided further that in the event that such Party does make such a claim at the Year End it shall continue to be able to claim in relation to all remaining Losses arising from the Relevant Event regardless of when they occur.

- (b) Neither Party shall be entitled to the indemnity under Article 16.2 if and to the extent that a Party has received payment in respect of a Loss or proceeding under the indemnities contained in the Lease Agreement or any other document comprising the Security Package in respect of the relevant act or omission.

16.6 Defence of Claims

- (a) The indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense with counsel of its selection and the indemnified Party shall provide it with a power of attorney if required for this purpose, provided it gives prompt Notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of such defence.
- (b) Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Article 16.6(a), the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against the indemnified Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.
- (c) Upon assumption by the indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgement of the indemnification and assumption of the defence.
- (d) Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party, the indemnified party shall have the right to employ its own counsel and such counsel may participate in such claim, suit, action or proceeding, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party has been authorised in writing by the indemnifying Party, (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action, (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified party to assume the defence of such action and shall have been so notified by the indemnified Party, or (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it that are different from or additional to

those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. If clauses (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder, subject to the indemnification obligations of the indemnifying Party hereunder.

ARTICLE 17 FORCE MAJEURE

17.1 Definition

For the purposes of this Agreement, a "**Force Majeure**" means a cause or event (i) that is beyond the reasonable control of the affected Party and was not due to the fault or negligence of the affected Party and that prevents such Party's performance of its obligations under or pursuant to this Agreement, and (ii) which the affected Party is unable to prevent, overcome or remedy by the exercise of diligence and reasonable care, or avoid by the exercise of reasonable foresight and mitigation [, it being understood and agreed that reasonable care includes the expenditure of sums of money ("**Mitigating Costs**") to protect the Facility from a casualty event, which sums are reasonable in light of the likelihood of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures].

"**Force Majeure**" shall include the following events and circumstances, but only to the extent that each satisfies the above requirements:

- (a) floods, hurricanes, tornadoes, typhoons, cyclones, earthquakes and other natural calamities;
- (b) fires or explosions that could not have been prevented by acting in accordance with industry standards or Prudent Utility Practices, as applicable;
- (c) war (declared or undeclared), riots, insurrection, rebellion, civil disturbance, acts of the public enemy, acts of terrorism and sabotage, blockades, embargoes or sanctions;
- (d) strikes which are widespread within the Territory of Guam, regional and industry-wide labor disputes unless affecting only or caused by Project Company or its Contractors (or their subcontractors of any tier) or their employees;
- (e) any Change in Law;
- (f) the unavailability of Fuel supply or Fuel transportation as a result of Force Majeure.

Force Majeure shall expressly not include the following conditions, except and to the extent that they result from a Force Majeure:

- (a) the absence of sufficient financial means to perform obligations or the failure to make payments in accordance with this Agreement;

- (b) weather conditions that could reasonably be expected to occur by an experienced contractor or electric generator in Guam other than extreme or unusually severe weather conditions that constitute a Force Majeure event in accordance with clause above;
- (c) shortages, unavailability, late delivery, or changes with respect to materials, spare parts, supplies, consumables or components of equipment for the Project;
- (d) price fluctuations with respect to materials, spare parts, supplies, consumables or components of equipment for the Project;
- (e) late delivery of materials, supplies or components of equipment;
- (f) economic hardship;
- (g) shortages of manpower;
- (h) the delay, default or failure to perform by a contractor or subcontractor;
- (i) machinery or equipment breakdown;
- (j) customs procedures
- (k) flaws in the Final Technical Specifications prepared by Contractor which require Contractor to re-design or re-engineer any portion of the Project or otherwise change or modify the Work.
- (l) normal wear and tear or random flaws in materials and equipment or breakdowns in equipment.

No event, whether or not it constitutes "Force Majeure" will excuse GPA from the obligation to:

- (a) make any payment when due and payable under this Agreement, provided that if the occurrence or effects of a Force Majeure affects the operation of all or a portion of the Facility, GPA shall continue, during the continuance of such Force Majeure or its effects, to pay the Capacity Charge for each MW of Dependable Capacity, after deducting from the Capacity Charge an amount determined by multiplying the Capacity Charge by a fraction, the numerator of which is the capacity that is unavailable due to the Force Majeure, and the denominator of which is the Dependable Capacity.
- (b) fulfill payment obligations under this Agreement including payment of the full Capacity Charge for the Dependable Capacity.

In the event that the Facility and associated energy is unavailable, in whole or in part, due to:

- i. the unavailability of Fuel supply or, subsequent to the transfer of the Electrical Interconnection Facilities to GPA, the unavailability of the Electrical Interconnection Facilities or electric transmission or distribution service sufficient to export the entire output of the Facility; or

ii. a condition caused by GPA or the Grid System,

the Facility, to the extent it is unavailable due to the foregoing reasons, shall be deemed available and providing the Dependable Capacity for the purposes of calculating liquidated damages under Article 9.

17.2 Notification Obligations

- (a) The Party affected by a Force Majeure shall give Notice to the other Party of any event constituting a Force Majeure as soon as reasonably practicable. Any Notice shall include full particulars of the event constituting a Force Majeure, of its effects on the Party claiming relief and the remedial measures proposed, including estimated cost and time to restore the Project, if appropriate. The Party affected by a Force Majeure shall coordinate with the other Party and give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request.
- (b) The Party affected by a Force Majeure shall give Notice to the other Party of (i) the cessation of the relevant event constituting a Force Majeure, and (ii) the cessation of the effects of such event constituting a Force Majeure on the enjoyment by such Party of its rights or the performance by it of its obligations under this Agreement, as soon as reasonably practicable after becoming aware of each of (i) and (ii) above.

17.3 Duty to Mitigate

The affected Party shall be responsible to use all reasonable efforts to mitigate the effects and costs of a Force Majeure.

17.4 Term Extension

If, during any period, the Dependable Capacity is not available due to the occurrence or effects of a Force Majeure and this Agreement is not terminated earlier than the original Term, the Term of this Agreement and the Lease Agreement shall be extended by the number of Days that the Dependable Capacity was not available due to the occurrence or effects of such Force Majeure.

17.5 Delay Caused by Force Majeure

Except as otherwise set forth below, neither Party shall be responsible or liable for or deemed in breach hereof because of any failure or delay in complying with its obligations (other than an obligation to make a payment) under or pursuant to this Agreement due to one or more events of Force Majeure or its or their effects or by any combination thereof, and the periods allowed or dates required (including the Required Commercial Operation Dates) for the performance by Parties of such obligation(s) shall be extended on a day-for-day basis to account for such event(s), effects or combination thereof; provided that no relief shall be granted to the Party claiming Force Majeure pursuant to this Article 17 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred.

17.6 Adjustments for Change in Law

- (a) In the event of a Change in Law which is of the type described in the Change in Law definition and has an impact on the Project that is equal or greater to [\$500,000] for a Contract Year , GPA shall pay to Project Company (without double recovery) a Supplemental Charge under this Agreement in such amount as is necessary to compensate Project Company for, and make Project Company whole with respect to any such additional costs and/or adverse affect on the expected financial benefit suffered as a result of such Change in Law.

- (b) In the event of a Change in Law that has a positive impact on the Project Company that is equal to or greater than [US\$500,000] for a Contract Year , Project Company shall adjust the Capacity Charge under this Agreement in such amount as is necessary to return the benefit of such increase to GPA.

ARTICLE 18
TRANSFER OF OWNERSHIP

18.1 Facility Transfer

- (a) On the Transfer Date, Project Company shall transfer to GPA, free from any lien or encumbrance and without the payment of compensation, all right, title and interest in and to the Facility including all fixtures, fittings, plant and equipment (including all test equipment, special tools, as-built drawings, software, documents, reports, analyses, all relevant files, plant procedures and forms as reasonably required and necessary for GPA to effectively operate the Facility after the transfer) and all improvements comprising the Facility (the "Facility Transfer"), provided that there is no default in payment obligations by GPA that has not been cured.

- (b) Six (6) months prior to the Transfer Date, GPA and Project Company shall meet and agree on the inventories involved and the mechanics of the Facility Transfer but Project Company shall not be liable for any discrepancies between such inventories and the actual fixtures, fittings, plant and equipment transferred, provided that following agreement on inventories Project Company shall exercise the same care regarding the fixtures, fittings, plant and equipment and all improvements therein as it did prior to agreeing to the same and provided further that GPA shall be entitled to provide a security unit within the Site.

- (c) [] shall be responsible for all costs and expenses (including legal fees and taxes or duties) incurred in connection with the Facility Transfer and shall at its own cost obtain or effect all Government Authorizations and other approvals, licenses, registrations and filings and take such other action as may be necessary for the Facility Transfer as contemplated in this Article 18, and reimburse [] on demand for all such costs and expenses incurred by [] in respect thereof.

18.2 Testing Prior to End of Term and Facility Transfer

- (a) Unless this ECA is terminated early, during the last year of the Term, the Project Company shall perform the tests described in Schedule 4 ("End of Term Tests") and the final pre-Facility Transfer overhaul described in Schedule 1 (the "Final Major Overhaul"). In the event that the End of Term Test results demonstrate that the Facility requires repair and/or replacement of equipment or parts, the Project Company shall carry out such corrective action as is required by Schedule 1.
- (b) If the Facility does not satisfy the requirements of Schedule 1, including the performance requirements set forth in Schedule 1, the Project Company shall immediately take such actions as will cause the Facility to comply with the requirements of Schedule 1. If the Project Company fails to cause the Facility to comply with the requirements of Schedule 1 within thirty (90) Days prior to the expiration of the Term, GPA (or its nominee) may take such measures as may be required for the Facility to comply with the requirements of Schedule 1 at the sole expense of the Project Company. In the event that Project Company does not make timely payments for such expenses, GPA shall have the right to draw such amounts from the Transfer Security and/or set off such amounts under Article 14.1(e)(iv).

18.3 Transfer Overhaul

Three (3) years prior to the expiration of the Term, the Project Company shall deliver to GPA a plan that is consistent with Prudent Utility Practices and reasonably acceptable to GPA setting out the anticipated costs and activities associated with the Final Major Overhaul and the Facility Transfer. The Final Major Overhaul shall occur no earlier than 18 months and no later than 6 months from the expiration of the Term. In the event that GPA, acting reasonably, does not agree with the costs and activities anticipated by the Project Company in such transfer plan and the Parties cannot agree on the costs and activities, the Dispute shall be resolved in accordance with ARTICLE 19, provided, however, that the Project Company's obligations under the transfer plan shall always be limited to the scope set out in Schedule 1. The plan shall also describe the reserves to be maintained by the Project Company to cover these anticipated costs and activities. The Project Company shall maintain adequate reserves to complete the Facility Transfer obligations required by Schedule 1.

18.4 Transfer Security

On or prior to the end of the twenty-first (21st) Contract Year, the Project Company shall deliver to GPA a security deposit in the amount of US\$15,000,000 (the "Transfer Security"). The security deposit shall be issued in one of the forms set out in Article 6 as security for performance of the Project Company's obligations under this ARTICLE 18. The deposit shall remain valid for one (1) year subsequent to the date of Facility Transfer. In the event that Project Company has not delivered the security deposit in favor of GPA by the end of the twenty-first (21st) Contract Year, GPA shall have the right to withhold payments to Project Company (including payment amounts owed pursuant to Article 14) up to the Transfer Security amount.

ARTICLE 19
CHOICE OF LAW AND RESOLUTION OF DISPUTES

19.1 Governing Law

This Agreement and the rights and obligations hereunder shall be interpreted, construed and governed by the laws of Guam and all applicable laws of the United States of America.

19.2 Initiation of Dispute Resolution

- (a) In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within thirty (30) Days after the date that the disputing Party gives Notice of the Dispute to the other Party which may include referring the Dispute to the Joint Coordinating Committee for a specified time period, subject to mutual agreement of the Parties.
- (b) In the event that the Dispute is not resolved in accordance with Article 19.2(a), either Party may refer the Dispute to the chief executive officer or chief operating officer of Project Company and GPA for further consideration. In the event that such individuals are unable to reach agreement within fifteen (15) Days, or such longer period as they may agree, then either Party may commence arbitration of the Dispute in accordance with Article 19.3

19.3 Arbitration

- (a) Any Dispute arising out of or in connection with this Agreement and not resolved following the procedures described in Article 19.2 shall be finally settled by arbitration under the ICC Rules by three (3) arbitrators appointed in accordance with the ICC Rules.
- (b) Any arbitration shall be conducted in English, and unless otherwise agreed by the Parties, the number of arbitrators shall be three (3).
- (c) The place of arbitration shall be Guam.
- (d) Unless otherwise provided in this Agreement, during the conduct of Dispute resolution the Parties shall continue to perform their respective obligations under this Agreement.
- (e) The arbitration tribunal may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to the Lease Agreement if the subject matter of the Disputes arises out of or relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitration tribunal appointed for the arbitration proceeding that was commenced first in time.

19.4 Consent to Jurisdiction

Each Party hereby consents to the jurisdiction of the courts of Guam for any action filed by the other Party to enforce a judgment entered for the purpose of recognising any award or decision of any arbitrator(s) or expert(s) who were duly appointed under this

Agreement to resolve any Dispute between the Parties. With respect to any such proceedings for the enforcement of any such award against the assets of a Party:

- (a) GPA appoints [] the [] of GPA, whose address is presently Gloria B. Nelson Public Service Building 688 Route 15 Fadian, Mangilao, Guam, to receive for and on its behalf service of process in such jurisdiction in any such enforcement proceeding; and
- (b) The Project Company appoints its [], whose address is presently at [], to receive for and on its behalf service of process in such jurisdiction in any such enforcement proceeding.

ARTICLE 20 NO LIABILITY FOR REVIEW

No review, non-objection or approval by GPA of any agreement, document, instrument, drawing, specifications or design proposed by Project Company shall relieve Project Company from any liability that it would otherwise have had for its negligence or wilful misconduct (i) in the preparation of such agreement, document, instrument, drawing, specification or design or (ii) the failure to comply with the applicable Laws of Guam with respect thereto.

ARTICLE 21 SHARE TRANSFER AND DISPOSAL OF ASSETS

21.1 Shares Certificate Legend Requirement

With respect to the transfer of the registered ownership of any Shares, Project Company (i) shall include appropriate legends on all share certificates evidencing Shares of Project Company to put prospective purchasers of such Shares on notice of the restrictions in the following provisions and, (ii) to the extent permitted by the Laws, shall not register or give effect to any purported transfer of Shares that is not in compliance with such restrictions or do not bear such legend.

21.2 Transfer Restriction

Prior to the second anniversary of the Phase 2 Commercial Operation Date, none of the Initial Shareholders shall (i) transfer any Shares owned by them or (ii) merge into or consolidate with any other individual, corporation, company, voluntary association, partnership, joint venture, trust, or (iii) dispose of assets of Project Company at any time, except for:

- (a) a transfer required by any Laws or by the operation of the Laws or by order of a court, tribunal, or Governmental Authority with appropriate jurisdiction; or
- (b) a transfer resulting from the enforcement of a pledge or security interest in or over any Shares in accordance with the Security Package; or
- (c) a transfer of Shares in accordance with the Lenders' Direct Agreement; or
- (d) a transfer to which GPA has given its prior written approval.

ARTICLE 22 NOTICES

Except as otherwise expressly provided in this Agreement, all notices, communications, or other documents (together "**Notices**") to be given or made by one Party to the other Party pursuant to this Agreement shall be in English and in writing, shall be addressed for the attention of the person indicated below, and shall be delivered by hand or sent by reputable international express courier by facsimile, or registered mail. Any Notice given by facsimile shall be confirmed by sending a copy of the same by personal delivery or by registered mail, but the failure to so confirm shall not void or invalidate the original Notice if it is in fact received by the Party to which it is addressed. The addresses for service of the Parties and their respective facsimile numbers are:

[.....]

or such other addresses and facsimile numbers as either Party may have notified to the other Party in accordance with this Article 22.

All Notices shall be deemed delivered (a) when presented personally, (b) when transmitted by facsimile to the receiving Party's facsimile number specified above, (c) one (1) Day after being delivered to a courier for express delivery, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by written Notice), or (d) five (5) Days after being sent by registered mail addressed to the receiving Party, at the address indicated above (or such other address as the receiving Party may have specified by written Notice). Any Notice given by facsimile shall be confirmed in writing delivered personally or sent by registered mail, but the failure to so confirm shall not void or invalidate the original Notice if it is in fact received by the Party to which it is addressed.

ARTICLE 23 MISCELLANEOUS PROVISIONS

23.1 Amendment

This Agreement cannot be amended except by prior written agreement between the Parties.

23.2 Headings

The headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement nor shall such headings be used in any manner to aid in the construction of this Agreement.

23.3 Third Parties

This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty or any liability to or any right of suit or action whatsoever, to any person not a Party to this Agreement.

23.4 No Implied Waiver

The failure or delay of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any provision hereof, shall neither be construed to be a waiver of such provisions nor affect the validity

of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision.

23.5 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, partnership or agency between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of independent sale and purchase of capacity and electricity generated at the Facility. Except as otherwise set forth herein, the Parties do not intend to create any rights, or grant any remedies to, any third party beneficiary of this Agreement. Therefore, Project Company shall be solely responsible for the payment of salaries, wages and mandatory and fringe benefits of its employees, which will not have any labour relationship with GPA.

23.6 Rights of Inspection

Project Company shall promptly furnish to GPA such information as GPA may from time to time reasonably request. Subject to Article 7.5, Project Company shall permit representatives of GPA on reasonable notice and during reasonable hours to visit the Facility, such visit to be at the cost of GPA.

23.7 Periodic Reports

- (a) Each Party shall, as soon as available but in any event within one hundred twenty (120) Days after the end of each fiscal year, furnish to the other Party: (a) two (2) copies of its complete financial statements for such fiscal year (which are in agreement with its books of accounts and are prepared in accordance with accounting principles which are generally accepted in Guam and consistently applied), together with an audited report thereon; (b) a copy of any management letter or other communication sent by the auditors to the Party or to its management in relation to the Party's financial, accounting and other systems, management and accounts; and (c) a report by the auditors certifying that, based on its financial statements, the Party was in compliance with its financial obligations as of the end of the relevant fiscal year or, as the case may be, detailing any non-compliance. In addition, each Party shall authorise its auditors (whose fees and expenses shall be for the account of the Party) to communicate directly with the other Party at any time regarding the Party's accounts and operations and shall furnish to the other Party a copy of such Authorization.
- (b) Each Party shall, as soon as available but in any event within sixty (60) Days after the end of each six (6) Month period of each fiscal year, furnish to the other Party: (i) two (2) copies of balance sheets of such Party, as of the close of that period, and statements of sources and uses of income and retained earnings and changes in the Party's capital accounts and financial position, for the period and for the portion of the fiscal year ending with that period, in each case setting forth in comparative form the figures for the corresponding period for the preceding fiscal year, all in reasonable detail and in accordance with the generally accepted accounting principles in Guam consistently applied

and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief accounting officer of the Party; and (ii) a report on any factors materially and adversely affecting or that might materially and adversely affect the Project or the Party's business and operations or its financial condition.

23.8 Survival

Articles [1, 2, 6.3, 6.4, 16, 19, 23, and 23] shall survive the cancellation, expiration or termination of this Agreement.

23.9 Language

The language of this Agreement shall be English. All documents, Notices, waivers and all other communication written or otherwise between the Parties in connection with this Agreement shall be in English.

23.10 Entirety

This Agreement and Schedules attached hereto [and the LLA] and any schedules or annexes thereto, taken together, are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement with respect to the subject matter of this Agreement and the LLA. All prior written or oral understandings, offers or other communications of every kind pertaining to the sale or purchase of capacity and energy hereunder to GPA by Project Company or to Project Company by GPA or pertaining to the connection of the Facility to the Grid System are hereby abrogated and withdrawn.

23.11 Assignment

This Agreement may not be assigned by either Party other than by mutual agreement between the Parties in writing. Notwithstanding the foregoing, for the purpose of financing or refinancing the Facility, GPA agrees that Project Company may assign to the Lenders its rights and interest or create security over its rights and interest under or pursuant to (i) this Agreement, (ii) the Facility, (iii) the movable property and intellectual property of Project Company and (iv) the revenues or any of the rights or assets of Project Company. The Parties acknowledge and agree that provisions, which shall be agreed with the Lenders, will be included in the Lenders' Direct Agreement which will provide, inter alia, for the Lenders' security interest and cure and step-in rights in and under this Agreement.

23.12 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective legal successors and assigns permitted in accordance with Article 23.11.

23.13 Confidentiality

Each of the Parties shall hold in confidence the agreements relating to the Project and all documents and other information, whether technical or commercial, which is of a confidential nature supplied to it by or on behalf of the other Party relating to the design, construction, insurance, operation, maintenance, management and financing of the Project and shall not publish, disclose or use the same for its own purposes other than as

may be required to perform its obligations under this Agreement or as may be required by law.

23.14 Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original and all of which when taken together shall be deemed to constitute one and the same instrument.

23.15 Severability

If one or more provisions contained in this Agreement are held or found to be invalid, illegal, or unenforceable in any respect, the provision(s) shall be given effect to the extent permitted by law and the invalidity, illegality, or unenforceability of any provisions shall not affect the validity of the remaining provisions of this Agreement.